United Nations A/HRC/26/35

General Assembly

Distr.: General
3 April 2014

Original: English

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights of migrants, François Crépeau

Labour exploitation of migrants

Summary

The present report is submitted in accordance with Human Rights Council resolution 17/12. It provides an overview of the activities carried out by the Special Rapporteur, including some reflections on the 2013 High-level Dialogue on International Migration and Development. The thematic part of the report focuses on labour exploitation of migrants. It covers some of the most common manifestations of labour exploitation, groups of migrants who are specifically at risk of such exploitation, and access to an effective remedy. The report is based on observations made during the Special Rapporteur's country visits, communications he has received from individuals and civil society organizations in the course of his mandate, as well as desk research.

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Contents

		Paragraphs	*Page*
I.	Introduction	1	3
II.	Activities carried out by the Special Rapporteur	2–15	3
	A. Participation in conferences and consultations	2–12	3
	B. The High-level Dialogue on International Migration and Development	13–14	4
	C. Country visits	15	4
III.	Labour exploitation of migrants	16–65	4
	A. Introduction	16–22	4
	B. Overview of the legal framework	23–31	5
	C. Manifestations of labour exploitation	32–48	7
	D. Groups of migrants specifically at risk of exploitation	49–58	11
	E. Access to an effective remedy	59–65	15
IV.	Conclusions and recommendations	66–106	17
	A. Conclusions	66–69	17
	B. Recommendations	70–106	17

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 17/12. It briefly outlines the activities of the Special Rapporteur on the human rights of migrants from 1 June 2013 to 31 March 2014. The thematic section is dedicated to labour exploitation of migrants.

II. Activities carried out by the Special Rapporteur

A. Participation in conferences and consultations

2. On 11 June 2013, in Strasbourg, the Special Rapporteur was the general rapporteur during the launch by the European Union (EU) Agency for Fundamental Rights and the European Court of Human Rights of a Handbook on European Court of Human Rights case law on asylum, borders and migration.

3. On 20-21 June 2013, the Special Rapporteur attended an expert meeting on global migration governance, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva.

4. On 3 September 2013, the Special Rapporteur attended a policy meeting entitled "Smart Borders? European and Global Logics of Border Surveillance in the Context of Privacy" at the Centre for European Policy Studies in Brussels.

5. On 4 September 2013, the Special Rapporteur attended a high-level meeting entitled "Migration and human rights: towards the 2013 High-level Dialogue on International Migration and Development", organized by OHCHR in Geneva.

6. On 3-4 October 2013, the Special Rapporteur attended the High-level Dialogue on International Migration and Development at the General Assembly in New York.

7. On 18 November 2013, the Special Rapporteur attended an expert meeting on human rights at international borders, organized by OHCHR in Geneva.

8. On 3 December 2013, the Special Rapporteur participated in an exchange of views with the European Committee against Racism and Intolerance in Strasbourg.

9. On 4-5 December 2013, the Special Rapporteur attended an expert workshop entitled "Strengthening the Migration-Development Nexus through Improved Policy and Institutional Coherence," organized by the Organization for Economic Cooperation and Development in Paris.

10. On 14 January 2014, the Special Rapporteur attended a seminar on the rights of migrant domestic workers' in Beirut.

11. On 20-21 February 2014, the Special Rapporteur attended the 12th annual coordination meeting on international migration in New York.

12. On 4 March 2014, the Special Rapporteur was the keynote speaker at the Human Rights Council's annual mainstreaming panel, which focused on protection and promotion of the human rights of migrants.

B. The High-level Dialogue on International Migration and Development

13. The second High-level Dialogue on International Migration and Development took place in New York on 3-4 October 2013. The Special Rapporteur attended the meeting, and intervened in round tables 2 (human rights) and 3 (partnerships and cooperation), as well as in numerous side events and parallel civil society meetings. Additionally, the Special Rapporteur focused his 2013 report to the General Assembly (A/68/283) on global migration governance and its impact on the human rights of migrants, with a view to being a useful advocacy document in the lead-up to the High-level Dialogue. The Special Rapporteur was pleased to see human rights discussed throughout the High-level Dialogue and not just at the human rights round table. This was in stark contrast to discussions he has observed in other forums outside the United Nations, and shows how beneficial bringing discussions on migration inside the United Nations can be.

14. While the High-level Dialogue took a significant step forward in ensuring that the human rights of migrants was part of all the discussions at the High-level Dialogue, and in the adoption of a Declaration, the Special Rapporteur regrets the absence of a plan of action or specific follow-up activities, without which the follow-up to the High-level Dialogue seems rather unclear. He urges all stakeholders to actively implement the Declaration, including in the discussions concerning the Post-2015 Development Agenda.

C. Country visits

15. In November 2013, the Special Rapporteur visited Qatar. Despite having sent several other requests over the past year, the Special Rapporteur was not able to secure an invitation to visit any other countries in 2013. He is grateful to Qatar for extending an invitation to him, and hopes to be able to undertake more country visits in 2014. In this respect, he has sent requests to the following countries: (a) Sri Lanka (accepted, visit will take place 19-26 May 2014); (b) Angola (accepted, dates to be agreed); (c) Côte d'Ivoire (accepted, dates to be agreed); (d) Nepal (accepted, dates to be agreed); (e) Bangladesh; (f) Ghana; (g) Malaysia; (h) Mauritania; (i) Myanmar; (j) the Republic of Korea; (k) Thailand; and (l) Viet Nam.

III. Labour exploitation of migrants

A. Introduction

16. People migrate for a variety of reasons. Push factors include war, conflict, natural disasters, persecution, poverty and unemployment. A major pull factor is the need for migrant labour in destination States. Irregular migration is frequently a result of a lack of regular migration channels, particularly for low-skilled workers, despite an often unrecognized need for their labour in countries of destination and the resulting vast underground labour markets that attract them. Many people see migration as the only way to improve their social and economic situation, and sometimes they see no other option but to migrate or remain irregularly. Migrants, and particularly irregular migrants or migrants with a precarious residence status, are often willing to do the "dirty, difficult and dangerous" jobs that nationals will not, at the exploitative wages that unscrupulous employers will offer.

17. Tensions between migrants and the local population have in many places been fuelled by the debate about national identity, and in some cases also by the economic crisis. Migrants are sometimes accused, including in the public debate, of "stealing" jobs by

accepting lower wages and poor working conditions. However, States seem to invest very few resources in trying to reduce the informal sector and sanction employers who profit from the exploitative conditions of work to boost their competitiveness.

18. Generally, migrants are at heightened risk of exploitation and abuse in the workplace, due to (a) deceptive recruitment practices, both by employers and intermediaries; (b) frequent lack of social support systems; (c) unfamiliarity with the local culture, language, their rights at work and national labour and migration laws in the country of employment; (d) limited or denied access to legal and administrative systems; (e) dependence on the job and employer due to migration-related debt, legal status, or employers restricting their freedom to leave the workplace; and (f) reliance by family members on remittances sent back home by the migrant. These factors are amplified by the discrimination and xenophobia that migrants are increasingly facing everywhere.

19. Factors which further contribute to exploitation of migrants in the workplace include (a) pressure to lower the cost of labour in highly competitive sectors; (b) the absence of effective implementation of labour and occupational health and safety standards; and (c) frequent lack of unionization. This concerns sectors where migrants are frequently concentrated, such as agriculture, construction, hospitality, care-giving, domestic work and informal work (such as street vendors). Migrants routinely work long hours, including overtime for which they are often not paid, and sometimes do not get their breaks or leave entitlements. They frequently report having been misinformed about labour conditions and benefits, and left without access to medical care and consular protection. A key contributing factor of their exploitation is their general fear of being identified, arrested, detained and deported for real or imagined reasons, and their consequent reluctance to risk complaining, protesting or publicly mobilizing, preferring very often to "move on".

20. The United Nations General Assembly, in its resolution 68/179, has requested all States "to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association". In the Declaration adopted by the General Assembly during the High-level Dialogue on International Migration and Development in October 2013, States agreed to (a) promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status; (b) protect women migrant workers in all sectors, including those involved in domestic work; (c) respect and promote international labour standards and the rights of migrants in their workplaces; and (d) cooperate on labour mobility programmes.

21. The Special Rapporteur has met with migrant workers during his country visits. He also continuously receives information from migrants themselves, civil society organizations and other sources on their behalf. This report is based on information collected by the Special Rapporteur during country visits, information received from migrants and other sources, and desk review. It also draws on the work of his two predecessors, including their findings during country visits and thematic reports.

22. Recruitment practices and their impact on the human rights of migrants is something the Special Rapporteur believes warrants a more thorough study, and he plans to look into this more in detail in one of his future thematic reports. Recruitment practices are therefore not covered in detail in this report.

B. Overview of the legal framework

23. The Universal Declaration of Human Rights and the core international human rights treaties provide a broad framework for non-discrimination and protection of the human

rights of all human beings, including migrants, both regular and irregular, and their rights at work. Article 4 of the Declaration prohibits slavery and servitude. Article 23 provides the right to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work, to just and favourable remuneration, and to the right to form and join trade unions. Article 24 provides the right to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay.

24. Articles 6 to 10 of the International Covenant on Economic, Social and Cultural Rights recognize the rights of everyone to (a) work which they freely choose or accept; (b) enjoy just and favourable conditions of work, including equal remuneration for work of equal value; (c) form and join trade unions; (d) social security, including social insurance; (e) the special protection from economic and social exploitation of children and young persons.

25. Article 8 of the International Covenant on Civil and Political Rights prohibits slavery, servitude and forced labour. Article 22 provides the right to freedom of association. Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

26. Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women enshrines equal rights of men and women in the field of employment, including (a) equal remuneration, including benefits, and to equal treatment in respect of work of equal value; (b) the right to protection of health and to safety in working conditions; and (c) maternity protection.

27. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination provides the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including in the enjoyment of civil rights and economic, social and cultural rights. Article 5(e)(i) provides the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration.

28. Article 32 of the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and hazardous and harmful work, and requires States to specify a minimum age for admission to employment. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography prohibits the sale of children, including for the purpose of engagement of the child in forced labour.

29. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families sets out minimum standards for migrant workers and members of their family, irrespective of their migratory status, in line with the principles of equality and non-discrimination, and with the provisions of other United Nations treaties, noting States' responsibilities to respect, protect and fulfil the human rights for all human beings. Article 7 highlights the principle of equality and non-discrimination with respect to human rights. Article 11 sets out the prohibition of slavery, servitude and forced labour. Article 25 provides that migrant workers shall enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and other conditions of work, including overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship. Article 25 also calls for equality between migrant workers and nationals in other terms of employment according to national law and practice, including minimum age of employment. Paragraph 2 of the same article states that private employment contracts may not derogate from the principle of equality of treatment. Article 26 recognizes the right of migrant workers to participate in trade unions and any other lawful associations and to seek the aid and assistance of such unions and associations. Part IV of the Convention provides additional rights for regular migrants. This

includes (a) the right to form associations and trade unions (article 40); (b) access to housing and social and health services (article 43); and (c) protection against dismissal and the right to unemployment benefits (article 54).

30. International labour standards adopted by the International Labour Conference of the International Labour Organization (ILO) apply to migrant workers unless otherwise stated. The fundamental principles and rights at work set out in the eight Fundamental ILO Conventions apply to all migrant workers, irrespective of their migration status. The 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up requires all ILO member States to promote and realize the principles concerning the fundamental rights enshrined in these Conventions. A number of other ILO standards of general application and those containing specific provisions on migrant workers in the areas of employment, labour inspection, social security, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction, hotels and restaurants, and domestic work, are of particular importance to migrant workers in an irregular situation. In formulating national laws and policies concerning labour migration and the protection of migrant workers in an irregular situation, States are also guided by (a) the ILO Migration for Employment (Revised) Convention, 1949 (No. 97); (b) the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and (c) the accompanying Recommendations Nos. 86 and 151. The ILO Multilateral Framework on Labour Migration, approved for publication and dissemination by ILO's Governing Body in 2006 and which is based on international human rights and labour standards, provides useful guidance to governments, social partners and other stakeholders in the formulation and implementation of national labour migration policies.

31. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, requires States parties to prevent and criminalize trafficking, and to protect victims. The definition of trafficking includes the recruitment, transportation or receipt of persons by means of the threat or use of force or other forms of coercion, fraud or deception, to achieve the consent of a person having control over another person, for the purpose of exploitation, including forced labour, slavery or servitude.

C. Manifestations of labour exploitation

32. While many migrants find decent work, enabling them to improve their social and economic situation, others end up as victims of labour exploitation. The following is a collection of some of the worst practices migrants face in different regions of the world, irrespective of their migration status.

1. Discrimination

33. Migrants report discrimination by their employers, on many grounds such as nationality, race and sex, with regard to, inter alia, remuneration, excessive overtime, opportunities for promotion, access to health care and unfair dismissals. Migrants are sometimes submitted to mandatory HIV testing, which is prohibited under the ILO HIV and AIDS recommendation, 2010 (No. 200). Migrants, both regular and irregular, are often employed under precarious and discriminatory conditions, with temporary contracts that do not entitle them to access social security services. They sometimes suffer verbal, physical and sexual abuse in the workplace.

34. One case brought to the Special Rapporteur's attention concerned alleged arbitrary arrest and detention, and lack of access to food, water and adequate housing in the context of a natural disaster. In this situation, migrants were reportedly excluded from the distribution of food and other essential items, and denied access to emergency shelters,

which were open to citizens only. Another case brought to the Special Rapporteur's attention concerned a migrant who was subjected to a mandatory medical test that revealed an old tuberculosis scar in his lung. He was subsequently deported, with no right to appeal the decision, despite the fact that he did not have an active tuberculosis infection.

2. Lack of employment contract and contract substitution

35. When migrants do not have a contract, it is extremely difficult for them to claim their rights and obtain compensation in relation to, inter alia, working conditions, wages and social security, work accidents or illness. However, recruitment agencies and employers routinely fail to provide migrants with a written contract. Some migrants receive a contract in a language which they do not understand, with no translation provided. Others find that their contract is not respected by their employer, including in relation to the wages and working conditions. Upon arrival in the country of destination, the contract they signed in their home country is simply substituted by another one, frequently with a lower salary and a different job description. For instance, one migrant the Special Rapporteur met was told she would work as a cook in a restaurant, but ended up as a domestic worker in a private household, with a much lower salary. Others were promised jobs as electricians or plumbers, but ended up as labourers. As these migrants have often paid a lot of money for recruitment fees, and many have taken out loans to pay these costs, they usually have no choice but to accept contract substitutions.

3. Withheld or unfair remuneration

36. Frequent human rights violations experienced by migrants in relation to payment of wages include irregularities with regard to pay such as non-payment or excessive delays in the payment of wages. Migrants also experience receiving unfair wages, including unequal pay for the same work or work of equal value, based on discriminatory criteria such as nationality. In particular, irregular migrants are frequently paid less than the minimum wage. Some migrants report being denied paid holidays, others are not paid for overtime, and some do not get paid sick leave. Migrants often receive their salaries in cash, which makes it difficult to prove when they have not been paid, or when unjustified deductions have been made from their salaries. One case brought to the Special Rapporteur's attention concerned a group of migrant farm workers who had not been paid for several months. When they requested their wages to be paid, they were shot at, and many sustained injuries. They were then allegedly left stranded in the greenhouse slum where they were living, trying to recover from their injuries in an unhygienic environment, with no Government support.

4. Confiscation of documents

37. Article 21 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that States parties should ensure that employers and recruiters do not confiscate or destroy travel or identity documents belonging to migrant workers. However, the Special Rapporteur has met with many migrants who have had their passports or other identity documents confiscated by their employers. Even when the law strictly prohibits the confiscation of documents, the Special Rapporteur has seen this happen systematically, particularly in respect of workers considered "low-skilled", including domestic workers and construction workers. Employers who have paid recruitment fees frequently see the migrants working for them as an economic investment, and therefore try to prevent them from leaving, inter alia by confiscating their passports. The confiscation of passports is routinely used as a tool to trap migrants in exploitative jobs, forcing them to perform work they would not agree to otherwise. This practice reinforces isolation and dependence and restricts the freedom of

movement of the migrant out of the place of work and residence, as well as out of the country.

5. Work and residence permit

38. In several countries practising diverse forms of "sponsorship" programmes, the legality of the stay of a migrant depends on the employment relationship. If this relationship ends, the migrants automatically lose their residence permits and may become subject to deportation. Additionally, if the employer is responsible for renewing work permits, migrants who are still working may end up in an irregular situation if the sponsor neglects or refuses to renew their permit, inter alia due to the cost or cumbersome procedures involved. Migrants whose residence permit depends on the work contract are thus heavily dependent on their employer, and vulnerable to abuse. Those who are indebted due to recruitment fees are rendered even more vulnerable, as they will feel pressured to pay off their debt before they can return home. Another problem experienced by many migrants is that they are tricked by the recruitment agency and are offered a tourist visa rather than a work visa. The Special Rapporteur has met with several such migrants, who used recruitment agencies to migrate, and were given three-month tourist visas which did not give them the right to work, and they thus ended up working without a work permit. He has also received information on legislation which gives the competent authorities the power to order a migrant with a work permit to leave the country if the person contravened any condition stated in his or her permit, with no legal process and no way for the migrant to challenge this decision.

39. When migrants are not allowed to change employer, which is routinely the case under "sponsorship" programmes, they are in a very vulnerable situation in which very few dare to lodge complaints of abuse or unreasonable working conditions, fearing the non-extension of their contracts and subsequent loss of a residence permit. Sponsorship systems which require that migrants obtain an "exit permit" from their employer in order to leave the country can also be abused by employers who prevent them from leaving the country for no good reason. For instance, the Special Rapporteur met with a migrant who was not allowed to travel home for his daughter's funeral.

6. Occupational safety and health

40. Lack of familiarity with local law and language difficulties frequently prevent migrants from being aware of specific hazards in their work. Occupational safety and health violations are a big concern, as migrants are often employed in high-risk hazardous sectors, including agriculture, construction, mining and different types of informal work. The Special Rapporteur has been made aware of high incidences of accidents and deaths among migrants in the construction sector. Health and safety programmes are sometimes under-resourced and not prioritized, and training sessions regarding occupational safety are routinely given in a language the migrants do not understand. Furthermore, migrants often lack familiarity with equipment, and undertake heavy physical labour for long hours, with poor access to health care. Migrants also frequently end up doing a different job than stated in the original contract. They then sometimes end up performing dangerous work, including operating heavy machinery, with little or no instructions or training, and without any safety equipment. Unreasonably long working hours and poor conditions render them even more vulnerable to accidents. Employers may also refuse or neglect to take the appropriate insurance coverage for their employees.

41. Migrants frequently find access to compensation for work accidents difficult. Migrants who suffer industrial accidents are sometimes not compensated, either by their employer, recruitment agency or insurance company. They often do not have information about their rights, and how to obtain compensation. Irregular migrants face additional

hurdles: they may not be entitled to compensation for work accidents, or fear detection by Government authorities by claiming compensation, or have difficulties proving the existence of a work relationship.

7. Restrictions on the right to medical care

42. Some migrants find access to health services difficult, inter alia due to the distance and lack of transportation. If they are sick, they may still be required to work. Some cannot access subsidized health care because their employers do not provide them with identity cards. The Special Rapporteur has received information indicating that, as a result of the economic crisis, many migrants have lost their jobs, and thus their residency status, and as a consequence are denied access to the public health-care system to which they have been contributing.

8. Indecent living conditions

43. Many migrants live in housing which lacks basic infrastructure and services including sanitation, electricity, potable water and adequate health-care services. The Special Rapporteur has seen shocking living conditions of migrant workers he encountered. The migrants, some with irregular migration status, lived in abhorrent conditions, in overcrowded houses, without proper sanitation. The Special Rapporteur learned that the wages received were often not sufficient to maintain an adequate standard of living. Some migrants are promised housing by their employers, but find out upon arrival that no housing accommodation has been made available.

9. Difficult access to social security benefits

44. The Special Rapporteur has received information indicating that many migrants are not provided with social security benefits. Migrants frequently risk losing entitlement to social security benefits in their home country due to their absence, and at the same time they may encounter restrictive conditions under the social security system of their country of employment. Portability of social security for migrants who wish to return to their home country is also problematic. Social security is particularly difficult to access for irregular migrants. While irregular migrants are often not able to participate in contributory schemes, they still contribute to financing social protection schemes by paying indirect taxes. Also, temporary migrants have difficult access to social security, due to long residency requirements.

10. Restrictions on the freedom of association

45. The right to organize and engage in collective bargaining is essential for migrants to express their needs and defend their rights, in particular through trade unions and labour organizations. However, some countries reserve the right to form and join associations and trade unions for their own nationals. The Special Rapporteur believes this is sometimes linked to the authorities' fear of migrants becoming more powerful and demanding their rights. In some countries, irregular migrants are prohibited from joining trade unions. The Special Rapporteur has been made aware of a case of denying legal status to a migrant trade union, due to the fact that its membership included irregular migrants. He has also been made aware of migrant trade union leaders who have been arrested and deported, or denied entry to a country despite having valid travel documents.

11. Trafficking and forced labour

46. The Special Rapporteur has been made aware of cases of migrants who are recruited by means of deception, for the purpose of economic and sexual exploitation. When the work is exacted (including through deception or false promises on the type of work, and

confiscation of passports) from a person under the menace of a penalty (such as the threat of deportation for leaving one's employer), this can amount to forced labour and in some cases servitude. Furthermore, debt, usually due to recruitment loans taken out with a very high interest rate, is sometimes used to coerce migrants to accept work to which they did not originally agree, and thus constitutes a component of forced labour.

47. Migrants are often deceived by their recruiters about their salaries, working hours, days off and the nature of the work, and experience exploitative working conditions and non-payment of salaries. Such deception and exploitation can amount to trafficking for labour exploitation. Information available to the Special Rapporteur indicates that recruitment agents are sometimes involved in trafficking of migrants for forced labour. They deliberately deceive prospective migrants about the conditions of work and withhold their passports, knowing they will be exploited.

12. Termination of employment

48. Migrants often experience that their work contract does not make the terms and conditions for the termination of the employment relationship clear. They can thus be denied the freedom to terminate employment and find another employer. Additionally, where an exit permit from the employer is required, migrants may be denied the right to leave the country. Migrants are also often victims of unfair dismissal. For instance, if their work is no longer required, despite the fact that they have a contract, their employer may tell them there is no work for them, resulting in the migrants either being left without a job, or sent back to their country of origin. In countries where the residence permit is linked to the employer, migrants may end up in an irregular situation if they choose to stay in the country, looking for a new job. The law may also not recognize the validity of a contract with an irregular migrant, who may be left without protection.

D. Groups of migrants specifically at risk of exploitation

1. Temporary migrant workers

49. Many temporary migrant workers are filling permanent labour needs, while others perform seasonal work, including in agriculture or tourism, which may amount to "circular" migration when the migrant returns year after year. Temporary migration is frequently discussed in international forums, such as the Global Forum on Migration and Development, as something uniquely positive. However, temporary migration programmes can have very negative consequences in terms of human rights, including access to economic and social rights, the right to family life and protection from exploitation. Generally, such programmes do not give migrants the right to free choice of employment, which makes them become dependent on their employer and vulnerable to abuse. Additionally, temporary migrants usually do not have access to welfare benefits given to long-term residents, and may be excluded from wage protection and social security programmes, including health insurance and employment injury coverage. As a result, temporary migrants often live in substandard housing or makeshift accommodation. States often restrict the rights of temporary migrant workers to family reunification and vocational training. Temporary migration programmes are inflexible to the needs of migrant workers, and give unequal power to the employer. As temporary migrant workers spend a short time in a specific area, they may find access to legal services and the judicial system difficult, inter alia due to lack of knowledge of the local law, language barriers, cultural isolation, their precarious migration status, as well as restricted right to organize. In particular, farm work, which is frequently seasonal and performed by temporary/circular migrant workers, is in some countries excluded from labour laws. This makes it very difficult for migrant farm workers to enforce their rights or improve their working conditions.

2. Migrant domestic workers

50. Migrant domestic workers, the majority of whom are women and girls, are extremely vulnerable to violence and abuse. ILO Convention 189 on decent work for domestic workers clearly recognizes domestic work as work. However, in many countries, domestic workers are not recognized as "workers", and thus not protected by labour law. As a consequence, they have no labour rights, no annual leave, no established working hours and no minimum salary. They are sometimes also excluded from rights relating to social security laws. Some countries rely on domestic work to be regulated by the work contract only, rather than by law. However, it is difficult for migrant domestic workers to claim their rights when their work is frequently considered informal, and not regulated by law. If the employer has diplomatic immunity, this renders the domestic worker even more vulnerable, due to the possible scope of the employer's immunity from criminal prosecution and civil claims.

51. In its General Comment No. 1 (2011) on migrant domestic workers, the Committee on Migrant Workers identified practices that increase the risk of abuse and exploitation in the workplace for migrant domestic workers, including "dependence on the job and employer because of migration-related debt, legal status, practices of employers restricting their freedom to leave the workplace, the simple fact that the migrants' workplace may also be their only shelter". These risks and vulnerabilities are further aggravated for migrant domestic workers who are in an irregular situation, as they often risk deportation if they contact State authorities to seek protection from an abusive employer. The Special Rapporteur has met with domestic workers who had run away from their employers after severe physical, psychological and sexual abuse. They also reported poor working and living conditions, including excessive working hours, sometimes without meal or rest breaks, no weekly days off, not being given sufficient food, not being paid for several months, and having their passports confiscated. They also suffer threats and intimidation, including that their employer will not renew their visa, have them deported, make false allegations to the police about them stealing from the household, or being thrown out into the streets. One case brought to the Special Rapporteur's attention concerned a migrant domestic worker who was repeatedly physically and sexually abused by her employer. She ran away, ended up in a detention centre and later on, while in a psychiatric hospital, committed suicide.

52. Migrant domestic workers, especially live-in workers, are particularly vulnerable to abuse as their workplaces are in private households, behind closed doors and out of the public eye. They are thus physically isolated, which makes it difficult for them to take collective action. They are frequently unregistered, and form part of the informal labour market. The frequent abuse against migrant domestic workers is further aggregated by the lack of labour inspections in private households. The right to change employer is instrumental in facilitating the escape of migrant domestic workers from exploitative and abusive situations. It is important for abused domestic workers to receive support and assistance and be able to file a complaint against their employer and seek work with another employer without facing the risk of being deported. A good practice brought to the Special Rapporteur's attention concerns a visa system in which visas are granted to the individual domestic workers and entitle them to basic labour rights under national employment legislation, including the right to pursue legal remedies against their employers. This has enabled migrant domestic workers to escape abuse and exploitation, in part because the visas are not tied to their employers. Consequently, domestic migrant workers who wish to leave their employers due to abuse, exploitation or other forms of ill-treatment are not treated as irregular migrants facing the risk of arrest and imprisonment, but rather as victims.

3. Migrant women

53. Migrant women risk being the victims of multiple discrimination, both as women and as migrants. Migrant women tend t. be employed in the shadow economy and in less skilled work than men, even though some are better qualified. They are generally more dependent on their employers, which puts them at greater risk of abuse and exploitation. Some countries set a minimum age for women to migrate, or ban low-skilled women from migrating, inter alia for domestic work. While this may be done with the intention of protecting women from abuse, this practice is not only discriminatory, it often leads women to resort to irregular migration, rendering them more vulnerable to abuse, which includes precarious working conditions, low pay and exposure to violence and forced labour. The Special Rapporteur has received information concerning requirements in some countries that women must obtain consent from their husband or legal guardian to migrate, and that they must indicate who will take care of their children while they are abroad. Such requirements do not seem to be in place for men.

54. Migrant women also face discrimination due to pregnancy. Some countries subject women migrants to mandatory testing, and women who are pregnant risk losing their residence and work permits. The Special Rapporteur has received allegations concerning proposed regulations to deport pregnant migrant workers, which may in turn compel these women to seek unsafe abortions as their only option to stay employed, exposing them to serious health risks, including risk of death. Migrant women are also at risk of gender-based violence, particularly those who work as domestic workers. The Special Rapporteur has met with several women domestic workers who were victims of sexual harassment and abuse. Those who become pregnant as a result of rape seek to have unsafe abortions or abandon their babies in order to avoid being stigmatized upon their return to their home countries, where they may already have a husband and children. Migrant women who are sponsored by their husband, and whose residence status depends on him, are vulnerable to domestic violence. During one of his visits, the Special Rapporteur met with a migrant woman who ran away from an abusive husband, and he then proceeded to cancel her residence permit. Some women who migrate to work as domestic workers are deceived by their recruiters and end up in forced prostitution, amounting to trafficking for the purpose of sexual exploitation.

4. Migrant children

55. A high proportion of child labourers in agriculture, domestic and different types of informal work, as well as in commercial sexual exploitation, are migrants. Frequent restrictions in access to educational services often leave migrant children with no choice but to work. Child labour in the informal economy includes petty trading, begging, portering, etc. Protection against exploitation is frequently lacking due to insufficient regulation and monitoring, as activities in the informal economy are not always categorized as work. During one of his country visits, the Special Rapporteur was informed of seasonal movements of children to neighbouring countries for begging and other forms of forced labour. He heard about children as young as seven leaving their country on short-term migration to beg, collect cans and pick tomatoes, and perform other types of agricultural work abroad. Migrant children who are domestic workers are at particular risk of abuse due to their young age and isolation from their families, and dependence on their employers. Migrant children who work as domestic workers or who live and work in factories and sweatshops are sometimes confined to the premises of the employer where they face further physical, psychological and sexual abuse.

56. Migrant children are more vulnerable to abuse and injuries than adult migrants. The frequent lack of distinction between adult and child migrants renders children vulnerable to rights violations, including in relation to the minimum age for admission to employment

and the worst forms of child labour. Information available to the Special Rapporteur indicates that recruitment agencies sometimes recruit children and provide them with forged passports, falsely indicating that they are above 18 years of age. A case brought to the Special Rapporteur's attention concerned a migrant domestic worker reportedly aged 17, although her passport stated that she was older. She was charged with murder for the death of a baby in her care, and was later executed by beheading. Migrant children, particularly those who are unaccompanied, are also vulnerable to trafficking. While boys are most vulnerable to becoming victims of trafficking for labour exploitation and forced labour, girls are most vulnerable to trafficking for sexual exploitation and sexual slavery. The lack of community relations and parental oversight of unaccompanied migrant children renders them more vulnerable to abuse and exploitation than local child labourers. They suffer from more maltreatment in the workplace and are generally worse off in terms of working conditions compared to local children. Migrant child labourers are among the least visible and least politically empowered of workers, meaning that employers have no incentive to provide them with proper working and living conditions. This lack of legal protection also generally translates to lower levels of health and education for migrant children.

5. Migrants in an irregular situation

57. The fact that a migrant is in an irregular situation does not deprive him/her of human rights protection. The human rights treaties, including the eight ILO Fundamental Conventions, apply to everyone, without discrimination. However, irregular migrants are frequently victims of labour exploitation. Due to their precarious situation, they often accept working for lower wages than regular migrants and nationals, and in dirty, difficult and dangerous conditions. Additionally, they regularly have difficult access to social services and health care, and live in constant fear of being detected, arrested, detained and deported, if they seek to improve their working conditions. Fear of drawing attention to their immigration status thus prevents many irregular migrants from organizing and from seeking protection from the authorities for their rights as workers, including in case of non-payment or late payment of their salaries, or implementation of health and safety regulations. Irregular migrants are also vulnerable to abuse and corruption. For instance, the Special Rapporteur has met with irregular migrants who reported having been detained and subsequently released when they paid the police a bribe.

58. States have the power to refuse to give irregular migrants access to their labour market. But as long as such migrants are in fact working, they are entitled to equal conditions of work, based on the principle of equality and non-discrimination. The Special Rapporteur has received information concerning legislation which prohibits irregular migrants from entering into business transactions with the State, including renewing business permits, and irregular immigrants have thus been forced to close their businesses. The same law provides that courts shall not enforce contracts in which one of the parties is known to be in an irregular situation, and as a result, employers have refused to pay their employees, claiming that they have no right to be paid under the new law. As provided by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 25.3), employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any irregularity in the stay or employment of migrant workers. The Special Rapporteur is of the opinion that, rather than seeking to apprehend irregular migrants who are working, States should spend more efforts targeting the employers who take advantage of, and often exploit, irregular migrants: this would have the beneficial effect of reducing the underground labour markets that attract irregular migration. The Special Rapporteur further believes that regularization is the most effective measure to address the extreme vulnerability of many irregular migrants, particularly for migrants who have lived in a

country for a long time, or who came as infants, or who are working and thus contributing to the society in which they live.

E. Access to an effective remedy

59. The Universal Declaration of Human Rights recognizes that everyone has the right to an effective remedy from the competent national tribunals for acts violating the fundamental rights granted to him or her. More specifically, article 83 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that migrants shall have access to an effective remedy, by competent judicial, administrative or legislative authorities, when their rights are violated. However, lack of knowledge of the local language and legislation, including in relation to their human and labour rights and how to report violations of those rights, means that migrants too frequently do not have access to an effective remedy. Furthermore, migrants who report abuse by their employer may fear retaliation. Irregular migrants always fear detection. Seeking remedy after return (either voluntary or deportation) to their country of origin is often very difficult. Migrants who live in employer-owned or operated migrant labour camps, which are frequently located in rural areas, and who are dependent on their employers for transportation and access to community facilities and public services, find access to legal services and community resources in general difficult. The Special Rapporteur has received allegations concerning lack of legislation and implementation of existing legislation which enables the practice of denying or not allowing certain human rights defenders, in particular legal advocates and other community service providers, meaningful access to migrant farmworker in labour camps, including by allegedly harassing and threatening these human rights advocates.

1. Complaint mechanisms and access to courts

60. Complaint mechanisms and courts are often not easily accessible for migrants, especially due to the frequent lack of interpreters and legal aid. Migrants are frequently not aware of the relevant legislation and different procedures in place, and even if they are, they may be reluctant to file complaints against their employers. This is due to various factors: their residence permits may be linked to their employment relationship, they may lack identity documents, they may have recruitment-related debt in their home country which they desperately need to pay, or there may be a lack of protection mechanisms or knowledge about such mechanisms for migrants who file cases against their employers. Migrants who do not have a written work contract often cannot prove a work relationship. The Special Rapporteur has received information indicating that irregular migrants who have sought advice from lawyers have been told that the lawyers may be forced to disclose their clients' immigration status, further hampering their access to the courts. Witnesses (usually co-workers) are often not willing to testify, as they may fear losing their job, or they may themselves be in an irregular situation and fear detection. Due to all these difficulties, migrants will in many cases choose to find a new job rather than confront an abusive employer: "moving on" often appears to be the best survival strategy.

61. Migrant domestic workers, in particular, are frequently very isolated. Those who never leave their employers' households often cannot communicate with others. When they can, they often do not know how to complain, or who to complain to, and they may fear reprisals, including false accusations of theft, losing their job, indefinite detention and being left on the streets. Reprisals are often a problem when trying to reveal cases of labour exploitation of migrants. As an example, the Special Rapporteur has received information concerning criminal charges of broadcasting false statements against a human rights defender who did research for a report which detailed serious human rights violations by a

company with regard to working conditions and labour rights of migrants employed by that company.

2. Labour inspections

62. Labour inspections are an important tool to combat human rights violations committed against migrants in the workplace and can, if undertaken properly, prevent such violations from occurring. However, the criminalization of irregular entry and stay and the emphasis on immigration control has in some countries led to cooperation between labour inspection and immigration enforcement and/or imposition of immigration control duties on labour inspectors. The result impedes effective protection of all migrants under labour law, and also intimidates migrants from denouncing abusive working conditions and from cooperating with labour authorities. A migrant who is either irregular and fears detection and deportation, or who has a precarious legal status and fears losing his/her job and subsequently becoming irregular, will be very reluctant to report workplace violations to labour inspectors, unless there is a "firewall" in place which prevents labour inspectors from communicating information about potentially irregular migrants to immigration enforcement. This "firewall" should apply not only to labour inspectors, but also to other public servants migrants may be in touch with, such as the police, social workers, school personnel and health care professionals, as well as courts, tribunals and national human rights institutions. Migrants should be able to report abuse without fear of repercussions regarding their migration status.

63. In relation to domestic workers, labour inspections are particularly challenging, as private households are usually off-limits for the inspectors and domestic workers are highly vulnerable to abuse and exploitation. The Special Rapporteur believes labour inspections inside private households, as well as regular meetings between domestic workers and a labour inspector outside the household, would be important to combat the too-frequent abuse of domestic workers: privacy is as important for the domestic worker as it is important for her employer.

3. Employer sanctions

64. Employers who hire migrants have unique social control over their employees. In particular, irregular migrants are easily exploited by their employers, who may require their workers to undertake strenuous physical labour for long hours, and frequently pay them far below the minimum wages, or not at all, knowing full well that their employees will avoid complaining. This control is further exacerbated by migrants' frequent lack of community and family support and limited knowledge of the local language and legislation. When the employer provides the accommodation and food for the migrants, this increases the dependence on their employer. Unscrupulous employers sometimes retaliate against migrants who voice employment-related grievances, such as the non-payment of their wages, including by denouncing them to migration and other authorities, or fabricating criminal accusations against them.

65. Employers who violate the human rights of migrants rarely face consequences. The Special Rapporteur has met with numerous migrants, particularly irregular migrants working in informal sectors, who were being exploited by unscrupulous employers. Said employers appeared to enjoy total impunity. Fighting labour exploitation of migrants by sanctioning exploitative employers often seems to be a yet-unfulfilled State obligation, although it would contribute greatly in reducing the pull factor of irregular migration and thereby diminish the power of exploitative smugglers over migrants, by reducing the attractiveness of irregular employment and thus reduce the size of the underground labour markets that are a key pull factor of irregular migration. The EU's Employers Sanctions Directive is a promising initiative in this respect, intended to facilitate access to justice by

victims of abusive or exploitative labour conditions, including irregular migrants, but it has yet to be effectively and extensively implemented.

IV. Conclusions and recommendations

A. Conclusions

66. **Migrants, especially those with a precarious residence status, are vulnerable to labour exploitation. Certain categories of migrants are more vulnerable to such exploitation, including temporary migrant workers, migrant domestic workers, women, children and migrants in an irregular situation. Access to an effective remedy for rights violations may be very difficult or impossible.**

67. **Unrecognized labour needs in destination States, especially for low-skilled labour, constitute a major pull factor for irregular migration. Opening up more regular migration channels for workers considered "low-skilled", thus recognizing the labour needs of destination States, and sanctioning exploitative employers, would reduce irregular migration and limit the power of smugglers' organizations, thus contributing to the better respect, protection and fulfilment of the human rights of migrants.**

68. **A large part of the labour exploitation that migrants suffer is linked to recruitment agencies, which extort high recruitment fees, despite this being prohibited by the ILO Private Employment Agencies Convention, and deceive prospective migrants on their prospective salaries, job descriptions, working hours, overtime, days off, lodging and social protection. International standards on business and human rights provide that private actors must as a minimum respect the human rights of their workers. The private sector, including recruitment agencies and employers, play an important role in labour exploitation of migrants, and must therefore be part of the solution. Governments must effectively regulate the recruitment industry.**

69. **A comprehensive national migration policy needs detailed elaboration and effective implementation in order to combat labour exploitation of migrants. ILO's Multilateral Framework on Labour Migration provides useful guidance in this respect. A comprehensive migration policy could mitigate tensions between migrants and local communities that result from poor migration management.**

B. Recommendations

70. **Establish coherent and comprehensive gender-sensitive national migration policies addressing all stages of the migration process, coordinated across government and developed in widespread consultation with national human rights institutions, the private sector, employers' and workers' organizations, civil society and migrants themselves, and with the support of international organizations. Ministries responsible for, inter alia, health, education, employment, children and social policies should be fully involved in the elaboration of such migration policies. The policies should have a human rights-based approach, and should include ethical recruitment practices, effective implementation of labour standards for all migrant workers, meeting labour needs at all skills levels, and more effective matching of labour supply and demand.**

71. **Address the pull factors for irregular migration, namely the unrecognized need for migrant labour in destination States, including for low-skilled workers, and the**

corresponding need to open up a greater number of regular migration channels and effectively sanction exploitative employers of irregular migrants, which would lead to fewer instances of irregular migration, and less exploitation of irregular migrants.

72. Improve the recruitment process, including through the effective regulation of private recruitment agencies and sub-agents/brokers, and abolish the practice of recruitment fees for migrants, as these fees should be covered by the employer.

73. Ensure that policymakers and the public are continually educated about the human and labour rights of migrants.

74. Improve data collection and indicators in all areas relevant to labour migration in order to make informed policy decisions.

75. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

76. Ratify the ILO Fundamental Conventions and the migrant workers Conventions (C.97 and C.143), as well as C.181 concerning private employment agencies, and C.189 concerning decent work for domestic workers.

77. Encourage and monitor the implementation by business enterprises of the Guiding Principles on Business and Human Rights. The principles state that business enterprises are required to (a) avoid causing, or contributing to, adverse human rights impacts through their own activities, and to address such impacts when they occur; and (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations.

78. Embassies and consulates of countries of origin should play an active role in protecting the rights of their nationals, such as by providing counselling, shelter, travel documents and return tickets, and assisting in legal proceedings. Additionally, trainings should be organized systematically for migrants in their home country prior to their departure, and include information on their rights and duties in the country of destination, information on complaint mechanisms, and provide basic language training.

1. Manifestations of labour exploitation

79. Take all necessary measures to combat discrimination and violence against migrant workers, including sexual violence, beatings, threats, psychological abuse and denial of access to medical care, by adopting and implementing legislation prohibiting such acts, effectively investigating cases of discrimination and violence, prosecuting and punishing those responsible, as well as providing reparations to victims.

80. Ensure that all workers receive a contract in a language they understand, and that they are protected against contract substitution. Ensure that the contract signed by the worker in their home country is respected in the destination country, and that the work they perform is in accordance with their contract. Bilateral agreements between countries of origin and destination should strengthen human rights protection, and include a model contract which sets out the rights of the worker, including working conditions, and salary. Use certified recruitment agencies, and ensure that they do not work with non-registered sub-agencies.

81. Combat wage theft and ensure, by law, that all migrant workers receive their salaries in a bank account, and that they are paid their full salary, including paid holidays, sick leave and overtime compensation when applicable, on time, and assist with recovery of wages when this is not complied with.

82. Make sure that passports and other identity documents are not confiscated, and make the withholding of such documents an offence, with appropriate penalties, and effectively prosecute violations.

83. Guarantee that all migrants have the right to accept and to leave employment voluntarily, without the threat of a penalty. Migrants who choose to leave an abusive employer should not lose their residence permit. Instead, they should receive adequate support, for example by providing them with a long enough grace period in order to find a new job. Allowing migrants to change employers when they wish would render them far less vulnerable to exploitation.

84. Provide adequate resources to relevant authorities for occupational safety and health. Ensure improved health and safety conditions in places that employ migrants, including through proper training and use of safety equipment, and ensure that injured migrant workers receive proper medical treatment and compensation.

85. Ensure that medical care is available to all migrant workers, including irregular and temporary migrants, and that it is not dependent on the production of identity documents or residency permits.

86. Guarantee that all migrant workers have an adequate standard of living, including adequate food, water, clothing and housing.

87. Grant migrants, including irregular and temporary migrants, access to social security benefits on the basis of equal treatment with nationals. States should consider entering into bilateral, regional or multilateral agreements to provide social security coverage and benefits to migrant workers in this respect.

88. Recognize the right of all migrants, including those in an irregular situation, to form and join organizations, including trade unions, and recognize these unions.

89. Undertake all the necessary measures to combat trafficking for labour exploitation and all forms of forced labour by migrants, and provide adequate support and assistance to the victims. Provide victims of trafficking with a residence permit that allows them to work and of a sufficient duration to allow them to rebuild their lives and consider their options.

90. Refrain from using sponsorship systems that make immigration status conditional on one given employer, as this creates a precarious status, restricts freedom of movement, increases vulnerability to exploitation and abuse, and leads to forced labour.

91. Ensure that migrants are free to terminate their employment contract, without fear of retribution, and find another employer or leave the country when they so wish. Protect migrants against unfair dismissals, and refrain from tying visas to the employer, so that migrants can find a new job in case their employment is terminated.

2. Groups of migrants specifically at risk of exploitation

92. Provide temporary migrant workers who are filling permanent labour needs with long-term residence permits, and provide permanent residence permits to circular migrants after a certain period. Ensure that temporary migrant workers have access to economic and social rights and protection from exploitation.

93. Extend labour protection in national law to domestic workers, including by formulating provisions related to minimum wages, payment for overtime, working hours, working conditions, days of rest, annual leave, freedom of association and social security protection, including with respect to maternity, pension rights and health insurance, as well as effective recourse and remedies. Ensure that migrant

domestic workers have a written contract, in a language they can understand, stating their specific duties, working hours, remuneration, days of rest, and other conditions of work. Model contracts should be adopted for this purpose. Persons who abuse domestic workers should be prevented from hiring more domestic workers in the future. Labour inspections should be undertaken also in employers' households, and regular meetings should take place between domestic workers and a labour inspector outside the household, in order to combat abuse. Ensure that migrant domestic workers have access to complaint mechanisms and legal assistance.

94. Repeal sex-specific bans and discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status. Prohibit by law mandatory pregnancy testing and deportation of women migrants who are pregnant. Take all the necessary measures to combat gender-based violence.

95. Continue to work towards the elimination of child labour for migrant children. Enhance government oversight in industries where there are large numbers of migrant child labourers working in hazardous conditions, such as in domestic work and agriculture. Ensure that labour inspectors are trained and knowledgeable about child labour. Ensure that migrant children have access to education on the basis of equal treatment with nationals. Ensure that children of migrants are registered upon birth, regardless of the migration status of the parents.

96. Combat abuse against irregular migrants, and implement sanctions against employers who exploit them. Countries of destination should establish regular migration channels based on the demand and recognized labour needs. They should consider regularization processes in order to avoid, or resolve, situations in which migrants are in, or at risk at becoming, in an irregular situation. They should also refrain from systematic detention of irregular migrants, and rather rely on non-custodial alternative measures, in line with the Report of the Special Rapporteur on the human rights of migrants of 2 April 2012 (A/HRC/20/24).

97. Monitor employment practices in sectors often dominated by migrant workers, such as the textile industry, construction, agriculture, hospitality, care-giving and domestic work, in order to ensure that migrant workers enjoy conditions of work equal to those of nationals.

98. Countries of origin should provide prospective migrants with information on regular migration channels, on the risks associated with irregular migration and on recourses available to them in case of abuse and exploitation.

3. Access to an effective remedy for human rights violations

99. Ensure that all migrant victims of abuse and exploitation have access to effective remedies, including the possibility of pursuing compensation claims, regardless of their residence status, without fear of retribution. Migrants should be provided with easy access to effective mechanisms for bringing complaints about violations of their rights, including a free phone number they can call to report cases in their own language. National human rights institutions have an important role to play in this respect, and consulates and embassies should also assist their nationals. Complaint mechanisms should be streamlined so that migrants can register their complaints with one Government office. All complaints should be promptly investigated, regardless of the residence status of the migrant.

100. Ensure that migrants, including those in an irregular situation, can access human rights institutions, courts and tribunals, without fear of being deported. Legal aid and interpreters should be provided as required. Courts should effectively apply the international human rights law and international labour law in providing

appropriate redress. Migrants who have filed cases against abusive employers should be allowed to remain in the country, and be given necessary assistance to take part in the trial against their employer and obtain justice. They should be provided with temporary immigration status that allows them to live in dignity until the case is resolved, including shelter – not detention – and food when needed.

101. **Strengthen labour inspection services, with respect to monitoring, as well as receiving, investigating and addressing complaints. Labour inspectors should be accompanied by interpreters in languages spoken by the migrants. Labour inspectors should be instructed not to share data concerning the migration status of migrants with immigration authorities, and rather focus on labour exploitation committed by employers.**

102. **Effectively implement employer sanctions and ensure that all abuses, including ill-treatment and exploitation are investigated and properly sanctioned where appropriate. Every employer and recruitment agent who engages in fraud or deception or is responsible for any other form of exploitation of migrant workers should be brought promptly to justice, including through criminal prosecutions, and be prevented from employing/recruiting migrant workers in the future.**

103. **Implement "firewalls" between immigration enforcement and public services such as police, health care and education, in order to make sure that irregular migrant workers enjoy their civil, economic, social and cultural rights without fear of being identified, arrested, detained and deported.**

104. **Train judges, lawyers, law enforcement and immigration enforcement officers and ensure their sensitivity to the human rights of migrants, whatever their status, and the dignity owed to them.**

105. **Ensure that migrants have access to justice after returning to their home country, including the possibility to claim unpaid wages.**

106. **Empower migrants, whatever their status, to defend their own human rights without fear of retribution, provide them with appropriate normative, institutional and programmatic tools in that regard, and support them in their fight against abuse and exploitation.**

United Nations A/HRC/26/35/Add.1

General Assembly

Distr.: General
23 April 2014

Original: English

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Mission to Qatar*

Summary

While recognizing that Qatar has the highest proportion of migrants of any country in the world, who outnumber Qatari nationals by far, and that this creates unique challenges, the Special Rapporteur concludes that efforts need to be stepped up to prevent human rights abuses against migrants.

Migrants often pay recruitment fees and arrive in Qatar heavily indebted, only to have their passports confiscated upon arrival and the contract signed in their home country replaced, significantly reducing their salary and often changing the nature of their work. Exploitation is frequent and migrants often work without pay and live in substandard conditions. Domestic workers are excluded from the labour law and are particularly vulnerable to abuse.

The recruitment process for migrants needs to be further formalized in order to prevent exploitation and legislation must be enforced in order to ensure their rights are respected. The *kafala* (sponsorship) system, which links a work permit to a single employer, is a source of abuse and exploitation of migrants and should be abolished.

The Special Rapporteur also notes the responsibilities of the countries that send migrants to Qatar and the private sector.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and in Arabic only.

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Annex

[English and Arabic only]

Report of the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to Qatar (3 to 10 November 2013)

Contents

		Paragraphs	*Page*
I.	Introduction	1–4	4
II.	General background: migration in Qatar	5–7	4
III.	Normative and institutional framework for the protection of the human rights of migrants	8–24	5
	A. International legal framework	8–10	5
	B. Regional legal framework	11–12	5
	C. National legal and institutional framework	13–24	6
IV.	Recruitment practices	25–43	7
	A. The kafala (sponsorship) system	25–32	7
	B. The recruitment process	33–38	8
	C. Bilateral agreements	39–41	9
	D. The role of migrant-sending countries	42–43	10
V.	Human rights violations in the workplace	44–47	10
VI.	Domestic workers	48–50	11
VII.	Access to remedy for human rights violations	51–54	12
VIII.	Detention of migrants in an irregular situation	55–68	13
	A. Detention practices and legislation	55–59	13
	B. Detention conditions	60–63	14
	C. Procedural safeguards	64–66	14
	D. Alternatives to detention	67–68	15
IX.	Cross-cutting concerns	69–77	15
	A. Xenophobia and the perception of migrants	69–70	15
	B. Irregular migrants	71	16
	C. Single mothers	72	16
	D. The 2022 World Cup	73–74	16
	E. The responsibilities of the private sector	75–77	16

X.	Conclusions and recommendations	78–148	17
	A. Normative and institutional framework for the protection of the human rights of migrants	82–89	17
	B. Recruitment practices	90–99	18
	C. Human rights violations in the workplace	100–110	19
	D. Domestic workers	111–115	20
	E. Access to remedy for human rights violations	116–120	20
	F. Detention of migrants in an irregular situation	121–127	20
	G. Cross-cutting concerns	128–133	21
	H. Recommendations to migrant-sending countries	134–139	22
	I. Recommendations to the private sector	140–148	22

I. Introduction

1. The Special Rapporteur on the human rights of migrants, François Crépeau, conducted an official visit to Qatar from 3 to 10 November 2013 at the invitation of the Government. As the visit focused mainly on labour migration and recruitment practices, this report does not provide a comprehensive overview of the human rights situation of migrants in Qatar.

2. During the mission, the Special Rapporteur met Government representatives (including the Ministry of Labour, the Ministry of Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the Supreme Council for the Judiciary, the Public Prosecution, and the Qatar 2022 Supreme Committee), representatives of the diplomatic community, the National Human Rights Committee, foundations, academics and migrants themselves. He also visited the deportation centre, the central prison and several shelters.

3. Due to the focus on recruitment of the visit, at the initiative of the Special Rapporteur the Ministry of Foreign Affairs organized a workshop during the visit to discuss recruitment practices. The workshop was attended by, inter alia, representatives of the Government, the United Nations, the National Human Rights Committee, the diplomatic community, foundations, recruitment agencies and construction companies.

4. The Special Rapporteur expresses his appreciation for the cooperation extended to him by the Government prior to, throughout and after the visit. He also thanks the staff of the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region in Doha for their valuable support and assistance.

II. General background: migration in Qatar

5. Revenues from oil and natural gas have enabled Qatar to attain the highest GDP per capita in the world. Qatar has made significant investments in infrastructure and construction. The population has increased from approximately 111,000 in 1970 to 1.9 million in 2013, largely due to the arrival of migrant labour beginning in the early 1980s. The majority of the migrants in Qatar are from South and South-East Asia, including Bangladesh, India, Indonesia, Nepal, Pakistan, the Philippines and Sri Lanka. There is also a significant number of Arab-speaking migrants, many of whom hold posts in the public sector.

6. Qatar is heavily dependent on migrant labour and has the highest ratio of migrants to citizens in the world. Approximately 88 per cent of the total population are migrants, commonly referred to as "foreign workers". They are employed largely in construction, services and domestic work. This situation poses unique challenges for the Qatari authorities and society and fuels a legitimate anxiety about national identity. However, it must be stressed that those migrants are in Qatar at the invitation of the Government and have received work permits in order to fill labour needs largely created by the booming economy, massive construction projects and widespread reliance on domestic workers, allowing Qataris to enjoy high levels of comfort.

7. The 2022 World Cup will create a need for additional migration to Qatar. In addition to stadiums and related infrastructure, a metro system and a railway system are in the process of being built and the road system and hotel capacity will be expanded.

III. Normative and institutional framework for the protection of the human rights of migrants

A. International legal framework

8. Qatar is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child and its Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. However, Qatar has not ratified the International Covenant on Economic, Social and Cultural Rights or its Optional Protocol; the International Covenant on Civil and Political Rights or its two Optional Protocols; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; or the Optional Protocols to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, or the Convention on the Rights of the Child on a communications procedure

9. Qatar has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). However, it has not adhered to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, the Convention relating to the Status of Refugees and its protocol, the Convention on the Reduction of Statelessness, or International Labour Organization (ILO) Conventions No. 97 concerning Migration for Employment (1949), No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975), No. 87 concerning Freedom of Association and Protection of the Right to Organize (1948), No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (1949), No. 189 concerning Decent Work for Domestic Workers (2011), or No. 181 concerning Private Employment Agencies (1997).

10. The Special Rapporteur hopes that the assurances he has received that the Government of Qatar is looking into the ratification of treaties, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and some ILO conventions, will bear fruit soon.

B. Regional legal framework

11. Qatar has been a member State of the League of Arab States since 1971 and became a party to the Arab Charter on Human Rights in 2009.

12. Qatar is a member of the Cooperation Council for the Arab States of the Gulf (Gulf Cooperation Council). There have been discussions in the Council concerning the adoption of a common law or a common model contract for domestic workers.

C. National legal and institutional framework

1. National laws

13. The permanent constitution was adopted in 2005. According to its article 6, the State shall respect international charters and conventions and strive to implement all international agreements, charters and conventions to which it is a party.

14. The constitution further provides, in article 35, that all persons are equal before the law and that there shall be no discrimination whatsoever on grounds of sex, race, language or religion. Article 36 states that personal freedom shall be guaranteed and no person may be arrested, detained or searched, nor may his freedom of residence and mobility be restricted save under the provisions of the law; no person may be subjected to torture or any degrading treatment; and torture shall be considered a crime punishable by law.

15. Article 44 guarantees the right of citizens to assemble and article 45 guarantees the right of citizens to establish associations. Article 52 provides every person who is a legal resident of the State protection to his person and property in accordance with the provisions of the law.

16. The main law governing migration is Law no. 4 of 2009 Regarding Regulation of Expatriates' Entry, Departure, Residence and Sponsorship (the Sponsorship Law). Article 18 provides that each expatriate granted an entry visa to Qatar shall have a sponsor. Apart from women sponsored by the head of the family, minors and visitors staying 30 days or less, all expatriates may only leave the country temporarily or permanently on submission of an exit permit granted by the residence sponsor.

17. The Labour Law of 2004 regulates the employment of all workers, except certain excluded categories (including domestic workers).

2. National institutions and policies

18. The Ministry of Interior is responsible for the entry and exit of migrants and the sponsorship system, including the transfer of sponsorship. The Search and Follow-up Department of the Ministry is responsible for the deportation of migrants and manages the deportation centre. The Human Rights Department receives and investigates complaints from migrants and undertakes visits to the deportation centre.

19. The Ministry of Labour is responsible for labour inspections (both health and safety inspections and worksite inspections), receiving complaints from workers and the recruitment of migrant workers, including certifying contracts and issuing visas and work permits. The Ministry of Labour deals with cases of abuse against migrants by negotiating between the migrant and the employer and it can contact the Ministry of Interior to check if the sponsorship can be transferred.

20. The National Human Rights Committee was established in accordance with Law No. 38 (2002) and reorganized in accordance with Law no. 17 (2010). It is accredited with "A" status by the International Coordination Committee of National Human Rights Institutions. The National Committee undertakes important work to enhance the protection of the human rights of migrants in Qatar, inter alia by assisting them in making complaints to the Ministry of Interior and the Ministry of Labour.

21. The Qatar Foundation for Combating Human Trafficking was established in 2003 by the Supreme Council for Family Affairs and transferred into a foundation by Sheikha Moza bint Nasser. The mission of the Foundation is to protect society from human trafficking and provide integrated care for victims. It operates a shelter for women victims of trafficking.

22. The Qatar Foundation for Education, Science and Community Development is a private, non-profit organization. It was founded in 1995 by Sheikh Hamad Bin Khalifa Al Thani and Sheikha Moza bint Nasser. The Foundation has launched a welfare initiative that is designed to curb unfair employment practices. Its mandatory standards of migrant workers' welfare set forth minimum mandatory requirements with respect to recruitment, living and working conditions and general treatment of workers engaged in construction and other projects at the Qatar Foundation.

23. The Qatar 2022 Supreme Committee was created after Qatar won the bid to host the FIFA World Cup in 2022. Its main responsibilities are the infrastructure projects related to the World Cup stadiums.

24. Qatar National Vision 2030, launched in 2008, aims to transform Qatar into an advanced country. It rests on four pillars: human, social, economic and environmental development. The National Development Strategy 2011–16 was prepared to set a path towards achieving the goals of Qatar National Vision 2030. The Strategy provides that the labour laws will be revised to protect further the rights and safety standards of all expatriate workers within a comprehensive social protection framework and in accord with international norms and standards. It further states that improving labour rights will not only benefit employees but also enhance the global image of Qatar as a leading and progressive nation. It sets as a target an increase from 6 to 20 in the number of ILO conventions signed.

IV. Recruitment practices

A. The *kafala* (sponsorship) system

25. The *kafala* (sponsorship) system is used to regulate the relationship between employers and migrants, with a work permit linked to a single person, the sponsor, who is often the employer, although this is not always the case. Sponsors are empowered by the Sponsorship Law to prevent migrants from changing employers and from leaving Qatar. The *kafala* system enables unscrupulous employers to exploit employees. Frequent cases of abuse against migrants include the confiscation of passports, refusal to give "no objection" certificates (allowing migrants to change employer) or exit permits and refusal to pay migrants' plane tickets to return home. Some employers do not extend residence permits for their employees, often because of the fees incurred. This leads to migrants ending up in an irregular situation, with no valid identity card, despite the fact that they are regularly employed.

26. Migrants are required to stay with their employer unless they get a "no objection" certificate and employers are required to report migrants who abscond to the Ministry of Interior. Migrants who leave their employers without a "no objection" certificate are charged with absconding and labelled runaways. They lose their residence permit and risk fines, imprisonment and deportation. The Special Rapporteur believes this system can amount to forced labour.

27. The Sponsorship Law of 2009 replaced a law from 1963 and includes some positive legislative developments, such as the provision which made it illegal for sponsors to confiscate passports. It also allows for a change of sponsor in certain cases and provides that the Ministry of Interior can provide an exit permit if the sponsor who refuses to do so cannot bring a court case against the migrant. However, the Special Rapporteur regrets that this law is not effectively enforced, as the practice of confiscating passports seems to be still widespread and change of sponsorship is difficult. While the Sponsorship Law allows

for the transfer of sponsorship by the Ministry of Interior in the event of abuse by the employer, in practice this provision is applied in relatively few cases.

28. The majority of the migrants the Special Rapporteur met, including construction workers and domestic workers, had had their passports confiscated by their employer, in violation of the Sponsorship Law. This included many migrants in the deportation centre, who had allegedly absconded from abusive employers. The explanation provided by the authorities, that most migrants prefer to let their employers keep their passports for them out of fear of loss or theft, contrasts with the testimonies the Special Rapporteur heard from migrants.

29. It has been argued that the *kafala* system is necessary because of the large number of migrants in Qatar. This cannot be used as an excuse for maintaining legislation that renders migrants vulnerable to abuse and exploitation. The Qatari authorities decide on the number of migrants they wish to admit to their territory. The demographic situation in Qatar is thus a result of Government policies and decisions, a nationwide choice of rapid development and a high level of household services.

30. The *kafala* system has been said to balance the interests of both parties, namely the employer and the migrant. Employers pay for the recruitment of the migrant and therefore feel that the migrant is an investment they need to hold on to. One way to solve this would be to reduce the costs of recruitment, inter alia by reducing the fees employers pay recruitment agencies and reducing the cost of visas. That way, employers could no longer argue that hiring a migrant is such a big investment that they need to keep them for an extended period of time.

31. Many of the persons the Special Rapporteur met, including Government representatives, were of the opinion that the *kafala* system is problematic and a source of abuse against migrants. The National Development Strategy provides for "review and revision as may be necessary, of Qatar's sponsorship system". The Special Rapporteur was informed that the Sponsorship Law is currently under review and that the Ministry of Interior will be granted broader powers to revoke sponsorship. The Special Rapporteur urges the authorities to make it easier for migrants to change sponsor and that this should happen automatically in all cases of alleged abuse by the sponsor. In the longer term, abolishing the *kafala* system and replacing it by a regulated open labour market, where the work permit allows the worker to change employer, would reduce the level of exploitation of migrants and at the same time ensure the mobility of labour and a better match of needs and skills.

32. Another problematic element of the *kafala* system is the exit permit requirement under the Sponsorship Law: migrants can only leave the country with an exit permit issued by their sponsor. This requirement violates the freedom of movement guaranteed by the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms Racial Discrimination. The claim that it is meant to prevent the flight of migrants after committing crimes can only apply to a few individuals and does not justify the pre-emptive punishment of thousands. It is a source of abuse and there is no valid justification for maintaining this system.

B. The recruitment process

33. Migrants who come to Qatar to work have often suffered abuse and exploitation in their home countries during the recruitment process. Recruitment fees are forbidden by Qatari law, yet many migrants the Special Rapporteur met had taken out a loan to pay recruitment fees in their home countries, a loan that may take months or years to be repaid. Some lacked information about their jobs and salaries before they left their countries.

Others reported having signed a contract in their home country which was replaced by a different contract upon arrival in Qatar, with a lower salary and a different job description. As migrants cannot change jobs without the agreement of their sponsor and they often have recruitment loans to pay back, they become highly vulnerable to abuse and less likely to report violations. In many cases, this will amount to trafficking as defined in the Palermo Protocol, since migrants are recruited by means of deception to achieve the consent of a person having control over another person for the purpose of exploitation in forced labour.

34. Recruitment fees also contribute to job mismatching, as the hiring is not based on competencies, but rather on the ability to pay the fee. In order to ensure the right person is hired for the job, there should be no fees imposed. While fees are banned in the Labour Law, some migrant-sending countries have legalized recruitment fees for migrants. It was also reported to the Special Rapporteur that recruitment agencies in Qatar sometimes receive kickbacks from recruitment agencies in the sending countries, thereby circumventing the Labour Law.

35. The Special Rapporteur welcomes the system of certification of contracts by the Ministry of Labour before a visa is issued, but these contracts are often not respected by employers upon arrival. Moreover, some migrants are tricked by recruitment agencies and travel to Qatar on a tourist or business visa and then end up working irregularly, unless they can find a sponsor after their arrival. The Special Rapporteur thus believes other procedures are necessary to verify that these contracts are respected in practice and that migrants are empowered to demand that their contracts are enforced.

36. A common practice reported to the Special Rapporteur was the buying and selling of visas, as a result of the "block visa" system. Reportedly, there are companies in Qatar with no employees, which are registered in order to get visas from the Ministry of Labour and then sell these visas to the highest bidder. Such fraud in relation to migrants is part of a pattern of violations of the law that contrast with the immediate and stiff sanctions for violations of the traffic rules, for example.

37. The Special Rapporteur notes the need to formalize the recruitment process, to set up a centralized body for recruitment and to monitor strictly the role of private recruitment agencies and possibly streamline them. He believes it will be important for the Qatari authorities to work together with the migrant-sending countries to ensure that migrants arrive in Qatar debt-free with a clear understanding of their work and living conditions. He also hopes that the authorities will consider some of the issues discussed during the workshop conducted during his visit. In particular, the idea of creating Qatari labour offices in sending countries which would, jointly with local authorities, conduct information campaigns, create ethical rating systems for local recruitment agencies and electronically register contracts, should be explored, either for Qatar alone or together with other member States of the Gulf Cooperation Council.

38. The Special Rapporteur welcomes the information that the Ministry of Labour is in the process of implementing a programme for electronic connection with labour-exporting countries, which will include the establishment of an electronic information base for those seeking jobs in Qatar. This will allow employers to choose their workforce from available applications and might effectively end the discrepancy between the job promised in the sending country and the job effectively occupied in Qatar. The Special Rapporteur hopes that this programme will prevent contract substitutions.

C. Bilateral agreements

39. Qatar has signed 31 bilateral agreements with migrant-sending countries. Those agreements include a model employment contract which provides for some regulation of

the work, including the contract period, travel expenses, wages, accommodation, medical care and annual leave, but it does not provide any details concerning a description of the work to be performed or the working conditions. The model contract provides that the contract may not be terminated before the expiry of its duration (one or two years) except upon mutual agreement by the employer and the employee. It also provides that the employer shall give the employee a personal loan if requested. These loans are often used as a reason not to let the employee change sponsor or leave the country.

40. The bilateral agreements state that a joint committee, comprised of representatives of Qatar and the sending State, shall meet every year to coordinate implementation of the agreement, interpret its provisions in case of disputes, review job opportunities in Qatar and propose review or modification of the provisions of the agreement. However, the Special Rapporteur was informed that such meetings do not take place regularly with all sending States.

41. The Special Rapporteur believes that it will be important for Qatar to include in all bilateral agreements with migrant-sending countries a revised uniform model contract for all workers, including domestic workers, which should ensure respect for and protection of the human rights of migrants, including labour rights and a minimum wage. Labour contracts based on such a model should specify the job description, wages and labour conditions. In this respect, the mandatory standards of migrant workers' welfare of the Qatar Foundation could be used as an inspiring model. E-government solutions could be developed to protect contracts against change upon arrival in Qatar.

D. The role of migrant-sending countries

42. While the Government is responsible for human rights violations committed against migrants in Qatar, the sending countries also have a role in preventing abuse of their own nationals who migrate for work. Many of the problems migrants in Qatar face relate to the recruitment process in their home country. Prospective migrants routinely pay high recruitment fees and sign contracts which are not respected once they arrive in Qatar and some are given a business or tourist visa rather than a work visa. As some of these recruitment agencies seem mostly concerned with making a profit, they simply promise contracts to whoever can pay the fee. This often results in persons getting a contract for a job for which they are not qualified; thus when they arrive in Qatar, without the required qualifications, they are given a different job with lower pay. Better regulation of recruitment agencies in sending countries would be an important tool in combating the exploitation of migrants in Qatar. Many migrants receive false promises from the recruitment agency in their country, but so do the employers – who often do not get workers with the qualifications required. Better regulation of recruitment agencies in sending countries would thus also be in the interest of employers in Qatar, who would then get better qualified employees.

43. Providing information sessions and pre-departure training for potential migrants could help ensure that they have the necessary training and skills, as well as information on working conditions in Qatar, their rights and how to access those rights.

V. Human rights violations in the workplace

44. While it provides some rights and safeguards for workers, the Labour Law of 2004 has important limitations. It does not provide for a minimum wage, it bans migrants from forming organizations and from collective bargaining and it excludes domestic workers from its application. Implementation of the law is also a problem. Many migrants in Qatar

face human rights violations in the workplace, partly due to lack of implementation of the Labour Law and a carelessness that may be fed by lack of consideration for Asian migrants. Some are not paid their wages on time, some are not paid at all and others are paid less than agreed. It has been argued that a minimum wage cannot be established because the recruitment agencies in Qatar are bound by contracts issued by sending countries. However, when sending countries have tried to set a minimum wage for their workers, this has resulted in workers of that country not being given visas for Qatar.

45. Living conditions in labour camps are often inadequate and in violation of Qatari law, such as the prohibition against bunk beds. The Special Rapporteur observed how a large number of migrants live in overcrowded and insalubrious conditions in the Doha industrial area. Many migrants do not have an identity card, because their employer did not provide them with one or did not extend its validity. As a consequence, they cannot obtain health cards to access subsidized health care. The Special Rapporteurs regrets the insufficient number of labour inspectors, who are not in a position to investigate thoroughly the working conditions or living conditions in labour camps, due to their small numbers and the lack of interpreters. He welcomes information received that the number of labour inspectors will be doubled from 150 to 300.

46. The Special Rapporteur is concerned about the level of accidents in construction sites and hazardous working conditions resulting in injury or death. He is also concerned at the lack of data on accidents and deaths, despite anecdotal evidence that too many of these mostly young men return home in a coffin. He notes the need for the workers' voices to be heard on issues that are of common interest to them, the employers and the Government. The authorities should consider allowing the creation of health and safety committees where workers would be represented. Ultimately, all workers should be allowed to form workers' organizations. The authorities should not see this as a threat, but as an opportunity to use the workers' voice to facilitate their own work, in the efficient management of a mobile and competent labour market, where grievances can be dealt with early on and not when accidents happen or workers abscond.

47. The Ministry of Labour has initiated a pilot programme with a three-tier ranking of companies based on the number of complaints against them. The Ministry also has a system for blacklisting companies. While blacklisting companies who abuse migrants may be a good idea, the problem is that if these companies cannot hire new employees, they will often be more reluctant to let their employees go. Thus, such companies will often refuse to provide "no objection" certificates or exit permits, resulting in their employees being stuck. When a company is blacklisted, attention must also be paid to the rights of those people who are currently working in that company.

VI. Domestic workers

48. Domestic workers are excluded from the Labour Law. This includes housemaids, drivers, cooks and gardeners. One reason put forward for this exclusion is that these workers do not have fixed working hours. Another explanation provided to the Special Rapporteur was that domestic work is regulated in the contract signed between the employee and the employer, so there was no need for a law. The Special Rapporteur strongly disagrees with this assessment. Domestic workers have as much need for their work to be regulated by law as any other worker, if not more. The Special Rapporteur met domestic workers who had run away from their employers after severe cases of physical, mental and sexual abuse. Some were overworked, forced to work as much as 21 hours per day, and "loaned" to other employers. Some reported not being given food, while others had not been paid their salaries for up to 10 months. Some were injured in accidents in the home. The vast majority had had their passports confiscated.

49. The National Development Strategy aims to reduce the heavy dependence on domestic workers in Qatar. The target is to reduce by half the average number of domestic helpers per household. The Strategy states that "The Government will devise a set of regulations, including standards and conditions, to better manage the recruitment and employment of domestic helpers. This way forward will be supported by new legislation covering the legal rights of domestic workers." The Special Rapporteur was pleased to hear that the Government has worked on a draft law for domestic workers and hopes for the speedy finalization and adoption of this law, in order to better safeguard the rights of domestic workers, whose abuse is rarely visible. This law should include provisions on, inter alia, wages, working hours, working conditions, payment for overtime, annual leave and effective remedies, as set out in ILO Convention No. 189 concerning Decent Work for Domestic Workers.

50. While welcoming the blacklisting by the Government of companies that abuse migrant workers, the Special Rapporteur insists that this should also apply to domestic workers. Persons who abuse domestic workers should not be able to hire more domestic workers in the future. Similarly, labour inspections should be undertaken also in private homes, in order to inspect working conditions and combat the too-frequent abuse of domestic workers.

VII. Access to remedy for human rights violations

51. There are different complaint mechanisms available for migrants, which can be accessed through the Ministry of Labour, the Ministry of Interior, the National Human Rights Committee, or directly at the labour court. However, migrants have difficulty accessing these mechanisms, partly because of lack of information, legal aid and interpreters and partly because they fear losing their job and subsequently being detained and deported, or they fear their sponsor's reactions. Often when a migrant reports abuse by their sponsor, the sponsor retaliates by filing criminal charges against him or her. Some migrants detained in the deportation centre reported not even being released from the deportation centre to attend their own court case filed against their employer. More efforts are needed to provide effective access to justice for migrants. Sponsorship should always be transferred at the request of the worker, at least temporarily, when a migrant files a complaint against their employer. Additionally, migrants who file a complaint against their employer often need help, including interpretation and legal aid, but often also a place to stay and food, while they wait for a decision in their case.

52. The complaint mechanisms are not very effective. Despite its good will and awareness of the issues, the National Human Rights Committee has limited means and cannot take any decisions, only transfer the complaint to the relevant ministry. The Ministry of Labour can only mediate and if the employer does not agree, the worker has to file a case with the court. Migrants find the division of competencies between the Committee and the Ministries of Labour and Interior confusing.

53. The Special Rapporteur notes the need for more effective sanctions against employers. He regrets the lack of effective investigation and prosecution measures for offences under the Labour Law and the small number of court cases against abusive employers, a situation which may be connected to the numerous non-Qatari judges without tenure. Access to the labour court is difficult: migrants have to pay a fee to file a case and getting a decision takes several months. The Labour Law provides that lawsuits filed by workers shall be exempted from judicial fees; however most migrants still have to pay 600 riyals to file a case. Reportedly this covers the cost of an expert opinion. This is money migrants often do not have – in fact many of the complaints by migrants relate to non-payment of their salaries for up to several months.

54. The National Development Strategy provides for the establishment of a tribunal to solve labour disputes. The Special Rapporteur welcomes this proposal, as it seems clear that the current system, with mediation by the Ministry of Labour and the lengthy procedures in the labour court, is not working satisfactorily. This new tribunal should be easy to access, with information provided in the languages spoken by the migrants, with interpreters, legal aid, no fees and quick settlement of disputes and enforcement of decisions.

VIII. Detention of migrants in an irregular situation

A. Detention practices and legislation

55. The detention of migrants is based on the Sponsorship Law. The Law provides that the detention of migrants awaiting deportation may be ordered for 30 days, "renewable for several similar periods", which may lead to long-term administrative detention. The Special Rapporteur met migrants who had been detained for as long as one year. Many of them are trapped in Qatar, as they lack one or more of the three requirements to go home: their passport, an exit permit and a plane ticket (to be paid by their employer). During the Special Rapporteur's visit, there were approximately 300 women and 1,050 men detained at the deportation centre. A new ward to accommodate up to 500 women was under construction.

56. Migrants who abscond from abusive employers are routinely detained and deported. The Special Rapporteur was informed that most migrants who await deportation are not kept in the deportation centre, but rather have to report to the authorities daily. Those detained are reportedly those who have a criminal case or civil claims against them, those who have resisted deportation and those who abscond from their sponsors. The fact that those who abscond may have been abused by their employer does not seem to be taken into consideration.

57. Some of the detainees had reported cases of abuse by their employers and in some instances their employers had retaliated by reporting criminal cases against the migrant who had absconded. Others could not leave the deportation centre until they had paid the fine for having overstayed their residence permit. However, it is the responsibility of the employer to ensure that migrants have a residence permit and often they do not extend the permits of the migrants working for them, mainly due to the cost incurred.

58. The majority of the women in the deportation centre had absconded from abusive employers, particularly the domestic workers, and they wanted to return to their countries of origin. The Special Rapporteur is of the opinion that it is very unlikely that they present any risk of absconding while trying to obtain their passport, flight ticket and exit permit. Their detention is therefore not necessary and constitutes a violation of their rights. Accommodating such women in open shelters, instead of building a new ward for women at the deportation centre, would provide a much better and cheaper solution. The Special Rapporteur was informed that women who do not have any legal issues or a criminal case against them are referred to the Qatar Foundation for Combating Human Trafficking and stay in their shelter. However, most women will have legal issues cited against them, as simply running away from an abusive employer is considered as such.

59. There were several pregnant women in the deportation centre during the visit of the Special Rapporteur. The Special Rapporteur deeply regrets this practice. The authorities should either facilitate their return to their countries, or house them in shelters. Similarly, children should never find themselves in detention: migrant women with children should always be hosted in shelters. While there were no children in the deportation centre during his visit, the Special Rapporteur was informed by several sources that women with small

children are routinely kept in the deportation centre and he was told that approximately 10 women with children had been removed from the centre the day preceding his visit.

B. Detention conditions

60. While welcoming efforts undertaken by the authorities to ensure decent conditions for the migrants in the deportation centre, the Special Rapporteur found the centre to be overcrowded and unsanitary. The migrants lacked sheets, a change of clothes, soap and other hygienic products. Several migrants were sleeping on mattresses on the floor in the corridors.

61. The Special Rapporteur heard reports of severe overcrowding in recent months and weeks, with migrants sleeping 2–3 persons in each bed or on the floor, but at the time of his visit, the situation in the deportation centre seemed to have improved somewhat. Some of the detained women had been moved to a different ward only a few hours prior to his visit, most likely in order to reduce overcrowding.

62. Several of the migrants the Special Rapporteur met reported different health conditions, both physical and mental, but they had not had adequate medical attention. One housemaid had been beaten and burned by her employer before running away. Another had injured her leg in an accident. One ran away after an attempted rape. Access to a doctor was difficult, with no proper treatment given. The detainees reported that the only medication given was aspirin, regardless of their illness. The Special Rapporteur heard stories of pregnant women in detention not receiving prenatal care, including one who had miscarried inside the deportation centre. It was also reported to the Special Rapporteur that mentally ill persons had been kept in the deportation centre, with no adequate treatment.

63. Some migrants who had been both in the central prison and the deportation centre, stated that the deportation centre had the worst detention conditions, a remark that fits with an unfortunate pattern of treating migrants with little respect for their dignity.

C. Procedural safeguards

64. The Special Rapporteur is concerned that detainees have limited ability to contact their families, limited access to legal assistance or consular services and virtually no professional interpretation services. Access to a phone was not guaranteed for those who did not have money to pay for the pay phone and mobile phones were confiscated. The detainees therefore had difficult access to the outside world and little knowledge about complaint mechanisms and how to challenge their detention.

65. The detainees reported that there was no way for them to make complaints about their detention or the conditions in detention. Some of them had spent several months in the deportation centre and lacked information about their situation, not knowing why they were there or what would happen to them. In general, the detainees the Special Rapporteur met had little or no information in a language they could understand about the reasons for their detention or its duration and little or no consular access or means of challenging their detention and/or deportation.

66. The Special Rapporteur notes as positive the visits to the deportation centre by the National Human Rights Committee and the Human Rights Department of the Ministry of Interior. However, he believes it is important for Qatar to ratify the Optional Protocol to the Convention against Torture and establish an independent national preventive mechanism tasked with undertaking regular unannounced visits to all places of deprivation of liberty in Qatar.

D. Alternatives to detention

67. As long as there is no specific risk of a migrant absconding from future proceedings and he or she does not present a danger to himself or herself or to others, detention is not necessary and thus a violation of that person's rights. A large number of the detainees the Special Rapporteur met wanted to go home to their country and it is therefore highly unlikely that they would abscond. The Sponsorship Law provides that the Minister of Interior may oblige migrants to reside in a specific area instead of resorting to detention and the Special Rapporteur was informed that reporting requirements are also sometimes used as an alternative to detention. The Special Rapporteur urges the Qatari authorities to systematically rely on non-custodial measures rather than detention. An individual assessment of the necessity of detention should be undertaken in all cases, in accordance with international human rights standards, and non-custodial measures should always be considered before detention. In this respect, the Special Rapporteur refers to his report on the detention of migrants in an irregular situation (A/HRC/20/24), which provides useful information on the different alternatives to detention and how to apply them.

68. The Special Rapporteur was informed that some migrants asked to be kept in the deportation centre because they had no place to live. Keeping such people in a shelter would not only be much cheaper than detaining them, but would also better respect the human rights and dignity of those concerned. The Special Rapporteur visited the shelters run by the Qatar Foundation for Combating Human Trafficking and the Qatar Foundation for the Protection of Women and Children. He welcomes the work of these foundations and urges the authorities to transfer detained migrants to such shelters, unless there is a specific reason that requires them to be detained while they are waiting to return to their countries. The capacity in such shelters should be expanded and new shelters should be established for all migrants in difficult situations, men, women and children.

IX. Cross-cutting concerns

A. Xenophobia and the perception of migrants

69. The Special Rapporteur regrets the negative perception of migrants in Qatar. Migrants are often seen as their employer's "property" rather than human beings with human rights equal to those of Qatari nationals. This is reflected in the systematic exploitation of migrants, who often live in slum-like conditions, work excessive hours in difficult and dangerous conditions and are often not paid for several months. Domestic workers are particularly vulnerable to such practices. This may unfortunately reveal entrenched discrimination, if not racism, when the victims are non-Qataris. The Special Rapporteur notes the need for the Qatari authorities to undertake measures to create a more positive perception of migrants in Qatari society, stressing that migrants undertake important jobs in Qatar, are an essential part of its economic success and deserve to see their dignity and rights protected on a par with that of citizens. As law enforcement is generally good in Qatar, it is regrettable that this does not extend to situations where migrants are concerned.

70. The Special Rapporteur is also concerned at the categorization of migrants based on their nationality, whereby some nationalities are seen as more valuable than others and migrants of some nationalities are paid higher salaries than others, while carrying out the same job. This form of discrimination constitutes a violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

B. Irregular migrants

71. While the vast majority of migrants enter Qatar regularly, some become irregular, inter alia because they abscond from abusive employers, or because their employers refuse or neglect to renew their residence permits. Those migrants often live in hiding, in fear of being detained and deported. The Special Rapporteur met migrants who had absconded and as a consequence had become irregular, who were afraid to seek medical assistance. They feared being asked for an official identity card, which they no longer had. He also met irregular migrants who had nowhere to live, having been evicted from the accommodation provided by their employers. Additionally, he met children who were irregular migrants and thus were not allowed to attend school.

C. Single mothers

72. In the central prison, there were several women who were sentenced to one year in prison for adultery for having a baby while being unmarried. These women lived in the prison with their babies, in conditions which are in clear violation of the principle of the best interests of the child, as stated in the Convention on the Rights of the Child. While noting that these women have violated Qatari law, the Special Rapporteur finds it unnecessary to keep them and their babies in prison and urges the authorities to come up with alternative solutions.

D. The 2022 World Cup

73. The Qatar 2022 Supreme Committee is responsible for the infrastructure projects related to the World Cup stadiums. It has developed a workers' charter with 10 principles, which all of its contractors and subcontractors will have to comply with. The charter covers, inter alia, health and safety, employment, equality, dignity, working and living conditions and wages. The Committee is in the process of developing employment standards based on the principles set out in the workers' charter. The charter is based on Qatari law, but goes further in relation to enforcement. It provides that the subcontractor is obliged to comply with the same rules as the contractor and it promotes an independent audit of companies. It provides a three-tier system for auditing: firstly, the contractor himself will do spot checks and report back; secondly, an independent auditor appointed by the Committee will undertake audits; and the third tier consists of labour inspections conducted by the Ministry of Labour.

74. The Special Rapporteur welcomes the commitment by the Committee to ethical recruitment and to developing employment standards in line with international human rights and labour standards. It is too early to say, however, how this will work in practice, as the World Cup construction projects have not yet started. The Special Rapporteur urges the Committee to ensure that workers' rights are fully respected in relation to the preparations for the World Cup. The standards of the Committee should fully comply with international human and labour rights standards. The Government should also ensure that, if successful, this experience is extended to all other construction projects, which should fully respect the human rights of migrants well before 2022. If this is the case, the World Cup could be used as an opportunity to improve the human rights of migrants in Qatar.

E. The responsibilities of the private sector

75. International standards on business and human rights provide that private actors must as a minimum respect internationally recognized human and labour rights. The

Guiding Principles on Business and Human Rights adopted by the Human Rights Council in its resolution 17/4 state that business enterprises are required to avoid causing or contributing to adverse human rights impacts through their own activities, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services through their business relationships.

76. The private sector can play an important role in ending the abuse and exploitation of migrants in Qatar. This includes ending practices such as contract substitution, the confiscation of passports, not providing identity cards, not paying employees on time and inadequate working and living conditions.

77. The Special Rapporteur was repeatedly told that the most serious abuse of migrants is not committed by large transnational companies, but rather by small companies which act as subcontractors. Transparency in the labour supply chain is crucial in order to prevent abuse: all intermediaries, subcontractors and other partners should therefore be identified and suppliers and other business partners should not engage unauthorized subcontractors. Companies must ensure that workers, including subcontracted labour, are not subjected to exploitative working conditions.

X. Conclusions and recommendations

78. **The high proportion of migrants in Qatar creates unique challenges for the country, but the Special Rapporteur concludes that efforts need to be stepped up to prevent human rights abuses against migrants in the country. Qatar has made progress in advancing the human rights of migrants, inter alia through some of the improvements introduced in the Sponsorship Law of 2009. However, much remains to be done in order to ensure full respect for the human rights of migrants in Qatar.**

79. **The Special Rapporteur notes that there is some good legislation in place, which could potentially prevent some of the abuse migrants currently experience in Qatar. However, this legislation is not adequately enforced.**

80. **The Special Rapporteur believes that a better informed and better protected workforce is a more productive and reliable workforce. It would benefit businesses in Qatar to have a more streamlined recruitment process. Abolishing the *kafala* system would attract more highly qualified workers. Recruitment fees mean that the people recruited are those who can pay the fee, not the ones who are most qualified. Formalizing the recruitment process, certifying recruitment agencies in sending countries and abolishing all recruitment fees would lead to better skills matching.**

81. **In light of the information received and the concerns expressed, the Special Rapporteur wishes to propose the following recommendations to the Government of Qatar.**

A. Normative and institutional framework for the protection of the human rights of migrants

82. **Effectively implement existing legislation, prosecute violations and impose appropriate sanctions on companies and individuals who violate the rights of migrants.**

83. **In accordance with Qatar National Vision 2030 and the National Development Strategy 2011–16, revise labour laws to further protect the rights of all migrant workers.**

84. **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which would provide the Qatari government with a useful framework for managing migration while ensuring the full respect for the human rights of migrants.**

85. **Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.**

86. **Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a national preventive mechanism with a mandate to undertake unannounced visits to all places where migrants are deprived of their liberty.**

87. **Consider seeking technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in order to make sure Qatari legislation and practice are in line with these treaties.**

88. **Ratify a number of ILO conventions, including No. 97 concerning Migration for Employment (1949), No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975), No. 87 concerning Freedom of Association and Protection of the Right to Organize (1948), No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (1949), No. 189 concerning Decent Work for Domestic Workers (2011) and No. 181 concerning Private Employment Agencies (1997).**

89. **Take fully into consideration the recommendations made by the National Human Rights Committee, including those in its reports in relation to the human rights of migrants.**

B. Recruitment practices

90. **Abolish the *kafala* system and replace it with a regulated open labour market, where the work permit allows the worker to change employer. This would include abolishing the "no objection" certificate and the exit permit requirement. In the meantime, the provisions of the Sponsorship Law should be strictly enforced and there should be clear criteria for when a sponsor can refuse to give a "no objection" certificate or an exit permit and abused migrants should always be allowed to change sponsor.**

91. **Conduct systematic checks to make sure that employers do not confiscate their employees' passports.**

92. **Ensure that migrants are properly informed as to their rights. In this respect, ensure that employment contracts signed by migrants are written in a language that they can read and understand.**

93. **Ensure that illegal recruitment fees are not charged and that contracts signed in the sending countries are not altered in Qatar without the informed consent of the migrant concerned. E-government solutions could be developed to protect contracts against change upon arrival of the worker in Qatar.**

94. **Formalize the recruitment process, set up a centralized body for recruitment, consider initiating a process across all the Gulf Cooperation Council countries and strictly monitor the role of private recruitment agencies.**

95. **Consider seeking technical assistance from ILO and OHCHR to reform the sponsorship system, improve the recruitment process and train government officials.**

96. **Work with certified recruitment agencies in sending countries and refrain from providing visas to workers who have gone through an uncertified agency.**

97. **Work together with countries of origin to ensure that migrants arrive in Qatar free of debt.**

98. **Consider opening offices of the Ministry of Labour in sending countries which would, jointly with local authorities, conduct information campaigns, create ethical rating systems for local recruitment agencies and approve and register contracts.**

99. **Fully respect the human rights of migrants in relation to the implementation of all bilateral labour migration agreements entered into. Include in all bilateral agreements a revised uniform model contract for all workers, including domestic workers, which should ensure respect for and protection of the human rights of migrants, including labour rights and a minimum wage. Labour contracts based on such a model should specify the job description, the agreed salary, working and living conditions and effective recourse and remedies. The mandatory standards of migrant workers' welfare of the Qatar Foundation for Education, Science and Community Development could be used as a model.**

C. Human rights violations in the workplace

100. **Ensure that there is no discrimination in relation to salaries based on the nationality of workers and consider establishing a minimum wage.**

101. **Find a way to guarantee the payment of salaries and plane tickets for migrants, inter alia by ensuring that all migrants have a bank account to which their salary is transferred every month and that bank records are regularly checked.**

102. **Ensure that all migrants are provided with identity cards.**

103. **Create a strong and effective labour inspection system, with a sufficient number of labour inspectors, who should be well trained in international human rights and labour standards. Labour inspectors should undertake thorough and regular unannounced inspections in all worksites. They should monitor the enforcement of labour laws, including by speaking directly with migrant workers, reviewing their contracts and making sure they are allowed to keep their passports, are issued with identity cards and are paid on time. Labour inspections should also take place in labour camps in order to inspect living conditions. Labour inspectors must be accompanied by interpreters in languages understood by migrant workers.**

104. **Collect disaggregated data, inter alia, on complaints by migrants against their employers and on workplace accidents, injuries and illnesses.**

105. **Audit all construction companies and make the results public.**

106. **Make the blacklisting and ranking of companies based on their compliance with labour standards public and accessible to migrants.**

107. **Revise the Labour Law in order to impose penalties on employers who do not pay workers their full salary on time and who do not grant them annual leave, as well as adequate penalties for employers who do not comply with accommodation standards for their employees.**

108. **Establish health and safety committees with worker representation on all worksites.**

109. **Recognize the rights of association and self-organization for all workers, including migrants.**

110. **Provide the Ministry of Labour with more resources in order to enable it to deal more effectively with certification of contracts, labour inspections and labour complaints.**

D. Domestic workers

111. **Adopt legislation on domestic workers that includes protection of labour rights, including in relation to working hours, overtime, a minimum wage, working conditions and annual leave, and effective compliance mechanisms.**

112. **Establish a minimum wage for domestic workers, which should apply to all workers, regardless of their nationality.**

113. **Ensure that domestic workers' passports are not confiscated by their employers.**

114. **Blacklist employers who exploit domestic workers.**

115. **Undertake labour inspections in private homes to inspect the working conditions of domestic workers.**

E. Access to remedy for human rights violations

116. **Provide migrants with information about their rights and how to access them. This could be done, inter alia, by disseminating the *Workers' Rights Book* of the National Human Rights Committee, both in migrant-sending countries and in Qatar.**

117. **Effectively investigate and prosecute offences under the Labour Law and the Sponsorship Law and ensure effective access to complaint mechanisms. This could be done by creating one extensive complaint mechanism on violations of labour and human rights, including in relation to recruitment, sponsorship, residence permits, contracts, working conditions, living conditions, wages and other labour disputes. This mechanism should be easy to access, with interpretation provided and no fees charged.**

118. **Ensure that migrants are not required to pay fees to file a case with the labour court and ensure easy access without fear of reprisals and speedy processing of court cases filed by migrants. Access to interpreters and legal aid should be guaranteed.**

119. **Ensure that detained migrants are able to appear in court.**

120. **Pursue the establishment of a tribunal to solve labour disputes, which should be easy to access, with information provided in the languages spoken by the migrants, with interpreters, legal aid, no fees and quick settlement of disputes and enforcement of decisions.**

F. Detention of migrants in an irregular situation

121. **Refrain from detaining individuals for the sole reason of having absconded from their employer. End the systematic detention of migrants awaiting deportation and always explore alternatives to detention. Detention should be a measure of last resort, limited to those cases where there is a risk of a migrant absconding from future proceedings, or when the person poses a threat to his or her own or public security, and its duration should be limited to the minimum time necessary. A maximum time limit should be established by law.**

122. **Significantly improve detention conditions and procedural safeguards, in line with international human rights standards, and develop appropriate regulations on the detention of migrants in line with international human rights standards. In particular, ensure that all detained migrants have easy access to:**

(a) **Adequate medical care, interpreters, adequate food and clothes, a bed and clean sheets, hygienic conditions, adequate space to move around and access to outdoor exercise;**

(b) **Information in a language they understand as to the reason for their detention, its duration and the right and means to challenge the detention;**

(c) **Means of contacting their family and consular services, as well as those of an interpreter and a lawyer, which should be free of charge if necessary, in order to be able to exercise their rights.**

123. **Seek guidance from the report of the Special Rapporteur on the detention of migrants in an irregular situation (A/HRC/20/24).**

124. **Refrain from detaining pregnant women.**

125. **Refrain from detaining children and families with children, in conformity with the principles of the best interests of the child and of family unity. Shelters should be established, particularly for those categories of migrants.**

126. **Ensure full access to all detention facilities for lawyers and international and local civil society organizations and implement systematic independent monitoring of detention centres.**

127. **Seek technical assistance from OHCHR in relation to the detention of migrants, including on how to determine the criteria for detention, and on procedural safeguards and detention conditions.**

G. Cross-cutting concerns

128. **Refrain from categorization of migrants based on their nationality and initiate a strong public discourse on social diversity and inclusion, which stresses the importance of fighting discriminatory behaviour and attitudes towards migrants.**

129. **Develop a human rights culture, including through conducting public campaigns on racism and xenophobia, and in cooperation with international organizations and civil society, include human rights education and awareness-raising in the educational curriculum of the school system, including respect for domestic workers.**

130. **Ensure that all migrants in an irregular situation can access their rights, inter alia to education, health care and housing. Those who have become irregular due to the actions of their employers, such as the non-renewal of residence permits, should receive assistance in order to solve their residence status.**

131. **Ensure that single mothers are not imprisoned with their babies. Instead, those who wish to return to their countries should be assisted in returning home with their babies, with help from their consular authorities. In the meantime, they should be housed in shelters, whenever required. Measures should be undertaken to prevent children born out of wedlock from becoming stateless.**

132. **Ensure that the standards of the Qatar 2022 Supreme Committee fully comply with international human rights treaties and ILO labour conventions. Use the 2022 World Cup as an opportunity to improve the human rights situation of migrants in**

Qatar and ensure that the rights of migrants are not violated as a consequence of the World Cup preparations, including the massive construction projects.

133. Increase the means of the National Human Rights Committee for coping with the number of abuse cases relating to migrant workers.

H. Recommendations to migrant-sending countries

134. Regulate recruitment agencies operating in their territory in order to guarantee ethical recruitment in compliance with international human rights and labour standards and impose sanctions on those who violate such regulations.

135. Ensure that recruitment agencies do not charge migrants fees, inter alia for their contracts, travel or visas.

136. Provide information sessions and pre-departure training for prospective migrants, in order to prepare them for their work in Qatar and ensure they have the necessary skills, including language skills, before their departure, as well as information on working conditions in Qatar, their rights and how to access those rights. This should also include information on the local culture and lifestyle in Qatar and on important legislation, which may be very different from those in their own countries.

137. When negotiating bilateral agreements with the Government of Qatar, ensure that they contain terms and conditions for safeguarding the rights of their nationals, including clauses on working conditions, living conditions, wages, working hours etc. and monitor enforcement of those agreements.

138. Ensure that their embassies in Qatar are properly equipped to provide assistance to their nationals in need.

139. Those that have not yet done so, should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

I. Recommendations to the private sector

140. Implement the Guiding Principles on Business and Human Rights.

141. Ensure that international human rights and labour standards are respected for all persons working on their projects and throughout the company's value chain. Integrate binding commitments to respect the rights of migrants in contracts with suppliers, contractors and business partners and put in place robust systems for the oversight of suppliers and subcontractors at all levels.

142. Implement due diligence mechanisms to identify, prevent, mitigate and account for potential and actual adverse impacts on the rights of migrants that the company may be causing or contributing to, or that may be linked to its operations, products or services.

143. Ensure that the migrants they hire do not pay recruitment fees in their home countries.

144. Ensure that contracts signed by workers in their home countries are respected and that the work they perform is in accordance with those contracts.

145. Provide adequate accommodation for their workers.

146. **Refrain from confiscating employees' passports and ensure they are always paid their full salary on time, including overtime compensation when applicable, inter alia through opening bank accounts for them.**

147. **Issue "no objection" certificates and exit permits as requested by employees, unless there is a justified reason not to do so.**

148. **Provide identity cards to all their employees and renew them as soon as they expire.**

United Nations A/HRC/26/35/Add.2

General Assembly

Distr.: General
5 June 2014

Arabic/English only

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the human rights of migrants, Mr. François Crépeau

Addendum

Comments by the Qatari Government on the report of the Special Rapporteur*

* Reproduced in the annex as received.

GE.14-04360 (E)
1404360

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Annex

[Arabic and English only]

Comments by the Qatari Government on the report of the Special Rapporteur on the human rights of migrants, Mr. François Crépeau, following his visit to Qatar (3 to 10 November 2013)

الموضوع: تعليقات وملاحظات دولة قطر حول تقرير المقرر الخاص المعني بحقوق الإنسان للمهاجرين، فرانسوا كريبو حول زيارته لدولة قطر خلال الفترة من 3-10 نوفمبر 2013

أشكر سعادتكم على كتابكم بتاريخ 10 مارس 2014 الموجه لسعادة المندوب الدائم لدولة قطر لدى الأمم المتحدة بجنيف، بخصوص تزويدكم بتعليقات وملاحظات حول تقريركم بشأن زيارتكم لدولة قطر في الفترة من 3-10 نوفمبر 2013.

أود في البداية أن أشكر سعادتكم على زيارتكم لدولة قطر في إطار ولايتكم المعنية بحقوق الإنسان للمهاجرين في الفترة من 3 – 10 نوفمبر 2013، والتي تعتبرها دولة قطر تاريخية حيث أنها الأولى من نوعها في إطار ولاية المقررين الخاصين بعد أن قدمت دولة قطر دعوة مفتوحة لجميع أصحاب الولايات في 2010. ونود أن نعرب لكم عن شكرنا وتقديرنا لتثمينكم أولاً على مستوى الشفافية والانفتاح والتعاون الذي أبدته الحكومة القطرية خلال زيارتكم للدولة، وإشادتكم بالسماح بزيارة جميع المؤسسات والهيئات التي طلبتم زيارتها، وثانيا: على تثمينكم العديد من الجوانب الإيجابية على المستوى التشريعي والمؤسسي والإجرائي التي قامت بها دولة قطر لحماية حقوق العمالة الوافدة. ونشاطركم الرأي في أن هذه الزيارة هي مقدمة ايجابية لحوار بناء مع الحكومة في سبيل المساهمة في تعزيز الإجراءات لإضفاء مزيد من الحماية والتعزيز لحماية حقوق العمالة الوافدة بالدولة.

بعد الإطلاع على تقريركم الخاص بدولة قطر نود أن نتقدم بالتعليقات والملاحظات التالية:

- **فيما يتعلق بالجزء الخامس من التقرير "انتهاكات حقوق الإنسان في مكان العمل"، نود إبداء الملاحظات التالية على الفقرة (44).**

- بشأن عدم وضع حد أدنى للأجور فإن سوق العمل بدولة قطر سوق مفتوح ويتم تحديد الأجر بين صاحب العمل والعامل الوافد بالتراضي بواسطة عقد عمل يتم التوقيع عليه من الطرفين واعتماده من وزارة العمل.

- اما فيما يتعلق بالعمال المنزليين وعدم تطبيق قانون العمل عليهم، نود الافادة بأنه يتم حاليا بالتنسيق مع الجهات المعنية والمختصة بالدولة دراسة مشروع قانون خاص بالعمال المنزليين يتماشى ويتوافق مع أحكام اتفاقية منظمة العمل الدولية رقم (189) والتي تم اعتمادها مؤخراً.

- اما بشان حظر ومنع العمال من تكوين تنظيمات نقابية فأن قانون العمل الصادر بالقانون رقم (14) لسنة 2004م قد وضع فصلاً خاصاً للتنظيمات العمالية يوضح الأسس والقواعد اللازمة لإنشاء هذه التنظيمات النقابية التي تحمي وترعى حقوق العمال.

- اما بشأن عدم تنفيذ القانون فإن جهاز تفتيش العمل الذي تم ترفيعه مؤخراً إلى إدارة مدعومة بالإمكانيات المادية والبشرية من اجل مراقبة ومتابعة تنفيذ قانون العمل على الواقع وفي مكان العمل وتم منح مفتشي إدارة العمل الضبطية القضائية لسرعة الانجاز في إزالة المخالفات والانتهاكات.

- **فيما يتعلق بالجزء السابع من التقرير "الحصول على سبل انتصاف في سياق انتهاكات حقوق الإنسان" نود إبداء التعليق التالي على الفقرة (51).**

- بشأن توفير المعلومات للعمالة الوافدة فقد أصدرت وزارة العمل "دليل العامل الوافد" باللغتين العربية والانجليزية وقد تم إرساله إلى الدول المرسلة للعمالة لتقوم بترجمته إلى لغتها الأصلية. وهذا الدليل يحتوي على معلومات عن دولة قطر والحقوق والواجبات المنصوص عليها في قانون العمل، علماً بأنه لوزارة العمل فريق إرشاد وتوجيه يقوم بعقد لقاءات مع العمال في مواقع عملهم لتوعيتهم بنصوص وأحكام قانون العمل القطري.

- إن وزارة الداخلية متمثلة في إدارة حقوق الإنسان تنهض بمهام تمكين العمالة الوافدة من التظلم استناداً إلى المادة (2/2) من قرار إنشاءها رقم 26 لسنة 2005، وذلك من خلال اختصاصها الأصيل بقبول ومعالجة شكاوى والتماسات الجمهور المتعامل مع الإدارة من المشتكين والملتمسين التي تشكل شكاوى العمال الوافدين في إطار علاقات العمل الجزء الأكبر منها.

- إن تجربة وزارة الداخلية في التعامل مع الجمهور لم تشهد أيه معوقات حالت دون وصول المشتكين والملتمسين إليها، حيث تشمل قضاياهم بالعناية والاهتمام اللازمين مع ما يقتضي لذلك من توجيه وارشاد ومساعدة قانونية، إضافة إلى تسهيلات الترجمة الفورية من قبل كادر مختص في الإدارة (باحثة مترجمة عن الإنجليزية، وأفراد يتحدثون الإنكليزية, والأوردية، والهندية).

- **تضمن التقرير في عدة مواضع منه ما يتعلق بنظام الكفالة، وماذونية الخروج، ومسألة تغيير مجالات عمل الوافدين وغيرها، وفي هذا السياق نود تسليط الضوء على آخر التطورات على الصعيدين القانوني والإجرائي لحماية حقوق العمالة الوافدة على النحو التالي:**

- في إطار التنسيق المستمر بين وزارتي الداخلية والعمل وحتى تقوم الجهات المختصة ببحث ومعالجة شكاوى العمال الوافدين بالسرعة الممكنة فقد تقرر انشاء مكتب يتبع ادارة العمل يكون مقره في ادارة البحث والمتابعة، علماً بأنه جار استكمال إنشاء هذا المكتب.

- إنشاء مكتب يتبع وزارة العدل في إدارة البحث والمتابعة تسهيلاً للمحتجزين والموقوفين عند تسجيل توكيلات لهم، أو إنهاء بعض الإجراءات المتعلقة بهم أثناء تواجدهم بالتوقيف.

- ثمة جهد مشترك يبذل من قبل الجهات المعنية في الدولة من بينها وزارتي الداخلية والعمل، لبحث العديد من الاحكام الواردة في قانون تنظيم دخول وخروج الوافدين واقامتهم وكفالتهم، وبخاصة ما يتعلق بالأحكام التي تخص نظام الكفالة لإجراء تعديلات جوهرية وجدية عليه مما يجعله اكثر مواكبة للمعايير الدولية لحقوق الإنسان للوافدين.

- العمل بقرار وزير الدولة للشؤون الداخلية رقم (29) لسنة 2009م بتاريخ 2009/6/16م بشأن تشكيل لجنة دائمة لدراسة حالات الموقوفين في حجز الابعاد خاصة الذين تجاوزت مدة ايقافهم ثلاثة اسابيع لأي سبب او اية حالات اخرى تعذر ترحيلها واية اشكالات تواجهها ادارة البحث والمتابعة في مسائل الترحيل، وتفويض اللجنة اتخاذ القرارات المناسبة ورفع التوصيات الخاصة بنقل الكفالة بشكل دائم او مؤقت إلى الوزير أو من يفوضه لاعتمادها.

- إنهاء إجراءات الاشخاص المرحلين، على وجه السرعة، دون تأخير وتسليمهم كافة مستحقاتهم المالية قبل السفر.

- تم إنشاء نيابة ومحكمة متخصصتين لسرعة البت في المنازعات والقضايا الخاصة بالعمالة الوافدة طبقاً لأحكام القانون رقم (4) لسنة 2009م بتنظيم دخول وخروج الوافدين واقامتهم وكفالتهم والقوانين ذات الصلة، مما افضى إلى سرعة النظر في هذه القضايا والمنازعات وحسمها.

- **فيما يتعلق بالتوصيات، نود أن نتقدم بالتعليقات والملاحظات التالية:**

<u>التوصية رقم (114)</u>

- وضعت الدولة نظاماً رادعاً للشركات التي يثبت قيامها بالإساءة إلى العمال الوافدين أو التعسف معهم، حيث يتم ادراج تلك الشركات في قوائم الحظر من الاستقدام وتحرم من استصدار تأشيرات جديدة إلى أن تقوم بتوفيق أوضاعها مع عمالها. وإن هذا النظام قد أثبت ردعه لتلك الشركات وساهم في تقليص الأفعال التي من شأنها الإساءة إلى العمالة الوافدة أو التعسف معها بأي شكل كان.

التوصية رقم (119)

- يتم تمكين الأشخاص المحتجزين الصادر ضدهم أحكام قضائية من الطعن على هذه الأحكام عن طريق الاستئناف أمام المحكمة المختصة.

التوصية رقم (121)

- إن مركز الابعاد هو مركز للحجز المؤقت للأشخاص الذين تقرر ابعادهم من البلاد بشكل فعلي. أما توقيف للأشخاص بسبب هروبهم، فيتم بناءا على حملات تفتيشية يتم من خلالها ضبط المخالفين للقانون رقم 4 لسنة 2009، حيث يتم عرضهم على نيابة شؤون الإقامة التي تقوم بدورها بإصدار قرارات في تلك المخالفات وبضمنها الحبس لبعض الأشخاص لمدة (4) أيام على ذمة التحقيق.

التوصية رقم (122)

- قامت وزارة الداخلية بجملة من التحديثات على أوضاع ومنشآت حجز الابعاد، حققت إلى حد كبير حالة من الموائمة مع معايير حقوق الإنسان للمحتجزين، فعلى سبيل المثال لا الحصر تم الآتي:
- إنشاء ملاعب لممارسة النشاطات الرياضية المختلفة.
- زراعة المساحات الخالية بمنطقة العنابر وجعلها استراحة ومتنفسا للنزلاء.
- إنشاء صالة مجهزة لغرض الزيارات التي تتم للمحتجزين من قبل ذويهم فضلاً عن تجهيز العنابر بصالة لمشاهدة التلفزيون.
- تطوير وتحديث العيادة الخاصة بإدارة البحث والمتابعة، وتلقي المحتجزين للعلاج على مدار الساعة.
- تطوير نظام تقديم الوجبات الغذائية حيث أصبح يقدم بنظام البوفيه المفتوح وبإشراف طبي.
- توقيع الكشف الطبي على المخالفين قبل التوقيف.
- تعيين حلاق للنزلاء وتخصيص مكان بكل عنبر لهذا الغرض.
- تجهيز المحتجزين بحقائب خاصة وتوزيعها عليهم مجاناً، تحتوي على كافة الأدوات التي يحتاجونها للاستخدام الشخصي داخل العنابر.
- بدء العمل بنظام الخلوة الشرعية للمحتجزين الذي تنطبق عليهم شروط هذا النظام.
- توافر الاتصالات المجانية لجميع المحتجزين، حيث يوجد هاتف مخصص لهذا الغرض بكل عنبر.
- توافر مترجمين للتواصل مع الأشخاص المحتجزين الذين لا يجيدون العربية أو الانكليزية، وذلك في (اللغات الأوردية، والهندية، والبنجالية، والفلبينية، ولغة دول البلقان).

التوصية رقم (128)، (129)

- قامت الدولة بأنشطة حيوية تتعلق بمناهضة التمييز ضد الأجانب وعلى وجه الخصوص العمال الوافدين، تنطوي على إشاعة روح مبدأ تعايش الحضارات والثقافات، حيث تم تأسيس مكتب للتواصل مع الجاليات في ادارة العلاقات العامة بوزارة الداخلية، حيث تام هذا المكتب بجمله واسعة من أنشطة التواصل مع الجاليات الوافدة (الهندية الانجليزية، النيبالية، الأوردية، الملبارية وغيرها) شملت:
- المشاركة في الاحتفالات التي تقيمها الجاليات في مراكزها الثقافية او مواقع العمل المختلفة في الدولة.
- التواصل مع وسائل الإعلام الناطقة بلسان حال مختلف الجاليات المقيمة في البلاد.

- إقامة الندوات التثقيفية والتوعوية التي يحضرها رؤساء الجاليات وجمع من رعاياها بالتنسيق مع الإدارات المعنية في الوزارة (للجوازات، المرور، حقوق الإنسان، اقسام الشرطة المجتمعية).

- تبصير الجاليات بما يترتب عليها من التزامات وحقوق بموجب قوانين (تنظيم دخول وخروج الوافدين وقامتهم وكفالتهم، العمل، المرور، العقوبات وغيرها).

- التأكيد على احترام ذاتيتها الثقافية، وحرية ممارسة شعائرها الدينية في إطار من احترام المنظومة القيمية والدينية القطرية.

- ربط الجاليات وممثليها بالثقافة الأمنية بهدف القضاء أو الحد من ظواهر الجريمة وسط الجاليات.

وفي الختام تود دولة قطر أن تثمن الموضوعية والمهنية والشفافية وعدم الانتقائية التي تميزت بها مسودة التقرير وتتطلع الدولة مستقبلاً لمواصلة التشاور والتعاون والعمل مع المقرر الخاص من أجل اضفاء مزيداً من التعزيز والحماية لحقوق العمالة الوافدة في الدولة.

The State of Qatar's comments and observations on the report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau on his mission to Qatar from 3 to 10 November 2013

1. The State of Qatar would like to thank the Special Rapporteur for his visit from 3 to 10 November 2013 within his mandate on human rights of migrants. This visit is considered to be a historical by the State of Qatar as it is the first of its kind within the mandate of the Special Rapporteurs since Qatar has extended in 2010 an open invitation to all mandate holders. We would like to express our thanks and appreciation to the Special Rapporteur for having paying tribute, first, to the level of transparency, openness and cooperation shown by the Government of Qatar during his visit, and for commending the fact that he was allowed to visit all institutions and bodies which had been requested. Secondly, for praising the many positive developments made by Qatar in respect of the legislative, institutional and procedural frameworks for the protection the rights of expatriate workers. We share his opinion that this visit is a preliminary step toward a constructive dialogue with the government to strengthen measures aiming at further protection and consolidation of the rights of migrant workers in the country..

2. After having reviewed the report on the State of Qatar, we would like to indicate the following comments and observations:

With regard to Part V of the report, "human rights violations in the workplace", we would like to make the following remarks on paragraph (44) on the non-implementation of minimum wage.

Qatar has an open labor market and the wage is consensually determined between the employer and the expatriate worker under an employment contract signed by both parties and approved by the Ministry of Labour.

With regard to domestic workers and the fact that they are excluded from the umbrella of the Labour Law. We would like to inform that a draft law on domestic workers is currently under review by concerned authorities in Qatar. The draft law is in line and consistent with the provisions of the recently adopted ILO Convention No. 189.

As for the fact that workers are not allowed to form trade unions, the labor law promulgated by Law No. (14) of 2004 includes a special chapter for trade unions which illustrates the rules for the formation of these unions which protect workers' rights.

With regard to the lack of implementation of the law, the Work Inspection Organ was recently promoted to become a Department to monitor and follow up the implementation of the labor law on the ground and in the workplace. Work inspectors of the Labour Department have been given the power of law enforcement officers to accelerate the elimination of irregularities and violations.

3. With regard to Part VII of the report " Access to remedy for human rights violations", we would like to make the following comments on paragraph (51).

On the provision of information for expatriate workers, the Ministry of Labour issued a Manual of Expatriate Employees in both languages, Arabic and English which was sent to the labor-sending countries to translate it into their original languages. This guide contains information about the State of Qatar and the rights and obligations stipulated in the labor law. Additionally, the Ministry of Labor has a Guidance and Educational Team that conducts interviews with workers at their work sites to raise their awareness of the texts and the provisions of the Qatari Labour Law.

The mandate of the Human Rights Department of the Ministry of Interior permits and allows expatriate workers to express their grievances and submit their complaints in accordance with Article 2/2 of the Decision 26 for 2005 that created the Human Rights Department.

In fact, the complaints received from expatriate workers constitute the bulk of complaints submitted to the Department.

The Ministry of Interior's experience in dealing with the public has never witnessed any obstacles preventing the access of complainants and applicants to the Ministry. Indeed, their cases are treated with necessary care and attention, required guidance and advice and legal assistance, as well as simultaneous translation provided by a specialized staff in the following languages (English, Urdu and Hindi).

4. The Kafala system (Sponsorship Law), exit permit, and the issue of changing work etc., are recurrent in the report. In this respect, we would like to highlight the latest developments at both the legislative and procedural levels for the protection of the rights of expatriate workers:

As part of the ongoing coordination between the Ministry of Interior and the Ministry of Labour and in order of enabling the competent authorities to consider and deal with expatriate workers' grievances as quickly as possible, it was decided to establish an office attached to the Labor Department at the Investigations and Follow-Up Department of the Ministry of Interior. The office completion is underway.

-Establishment of an office at the Investigations and Follow-Up Department attached to the Ministry of Justice to facilitate the transactions of the detainees and arrested persons during their arrest.

-A joint effort is made by the concerned authorities in the country, including the Ministry of Interior and the Ministry of Labour, to discuss several provisions enshrined in the law regulating the entry and exit of expatriate workers, particularly the provisions regarding the sponsorship system with a view to modifying it in a substantive and serious manner to make it more in line with international human rights standards on workers' rights.

-Implementing the decision of the Minister of State for Interior Affairs No. (29) of 2009 dated 16/6/2009 on the establishment of a standing committee to study the cases of detainees held in the Deportation Center, particularly those whose period of detention exceeds three weeks, or any other cases that cannot be deported, as well as other problems faced by the Investigations and Follow-Up Department in matters of deportation. This Committee is empowered to take appropriate decisions and make recommendations to the Minister of Interior or his designee on issues related to the transfer of sponsorship permanently or temporally .

- Finalizing promptly and without delay the proceedings regarding deported persons, including their financial entitlements before their travel.

- A specialized prosecution office and two courts have been established for the speedy settlement of disputes and issues concerning expatriate workers in accordance with the provisions of Law No. (4) of 2009 regulating the entry and exit of expatriate workers and other relevant laws. This has led to a rapid review of these issues and resolution of disputes.

5. Regarding the recommendations, we would like to present the following comments and observations:

- Recommendation no 114

The State of Qatar has developed a system with deterrent effect for companies that abuse expatriate workers or mistreat them. These companies are thus included in the list of

companies banned from *overseas recruitment* and from the issuance of new visas until they adjust their positions with their workers. This system has proven to be an effective method of deterring those companies and contributed to the reduction of abuse and mistreat acts towards expatriate workers, *whatever form it* takes.

- Recommendation no 119

Convicted persons are entitled to appeal their sentences before competent courts.

- Recommendation no 121

6. The Deportation Centre is used for detention of expatriates awaiting effective deportation from the country. The arrest of absconding workers is based on inspection campaigns aimed at apprehending persons contravening the law No. 4 of 2009. They are then brought before the Prosecution of Residency Affairs, which issues in turn decisions on those irregularities, including the imprisonment of some persons for 4 days pending investigation.

- Recommendation no 122

The Ministry of Interior has conducted a series of updates on the conditions and facilities of the Deportation Center which achieved, to a large extent, an alignment with human rights standards for detainees. This includes:

Establishment of playgrounds for various sports activities,

Planting empty spaces in the wards to be used as a rest place and as a breather.

Establish an equipped lounge for the visits to detainees by their relatives, as well as a lounge inside the wards for watching TV.

Develop and modernize the clinic of the Investigation and Follow-Up Department to receive and *treat* detainees *around-the-clock*.

Develop a meal provision system as it offers now an open buffet under medical supervision.

Performing the medical examination for contravening persons before the arrest.

Designate a barber for detainees and allocate a special place for this purpose.

Free distribution of bags containing all needed tools for personal use in the wards.

Introduction of a system with respect to lawful meeting in privacy (between husband and wife) for detainees who meet the conditions of this system.

Free communication for all detainees, as there is a dedicated phone in each ward for this purpose.

Presence of interpreters in the following languages for detainees who don't speak Arabic or English (Urdu, Hindi, Bengali, the

Philippines, and Balkan languages).

- Recommendations no 128 and 129

The State of Qatar carried out vital activities relating to combating discrimination against foreigners, particularly expatriate workers, including spreading the spirit of coexistence between civilizations and cultures. For this reason, an office was established to communicate with expatriate communities at the Public Relations Department of the Ministry of the Interior. This office has undertaken a wide range of communication activities with expatriate communities (Indian, English, Nepali, Urdu, Malayalam and others) . These activities include:

- Participation in the ceremonies organized by expatriate communities in their cultural centers or at different work sites in the State of Qatar.

- Communicate with the media which are a mouthpiece for different communities residing in the country.

- Convening educational and awareness seminars attended by heads of communities and their nationals in coordination with the concerned departments in the Ministry (Passports, Traffic, Human Rights and Community Policing Sections).

- Enlightening communities on their obligations and rights arising under the relevant laws (laws regulating entry and exit of expatriate workers, Labour L aw, Traffic Law and Criminal Law, etc.,).

- Stress the respect of their cultural identity and the freedom to practice their religion, inline with the respect of Qatar's religious value system.

- Connection of communities and their representatives with culture of security in order to eliminate or reduce the phenomena of crime within communities.

7. In conclusion, the State of Qatar would like to commend the objectivity, professionalism, transparency and non-selectivity which characterized the draft report. Qatar is also looking forward to continuing its future consultation, cooperation and work with the Special Rapporteur for further promotion and protection of expatriate workers' rights in the State of Qatar.